IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1962.

No. 15.

[redacted]

vs.

[redacted]

Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division.

BRIEF ON BEHALF OF APPELLANTS.

[redacted]

[redacted]

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 112.

JAMES H. GRAY, as Chairman of the Georgia State Democratic Executive Committee, et al.,
Appellants,

vs.

JAMES O'HEAR SANDERS,
Appellee.

Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division.

BRIEF ON BEHALF OF APPELLANTS.

I.

OPINION BELOW.

The decision of the three judge district court below, rendered on April 28, 1962 (R. 182), is reported as **Sanders v. Gray,** 203 F. Supp. 158 (D. C. Ga., 1962). A motion for stay by appellants (R. 209) was denied May 4, 1962 (R. 212). Probable jurisdiction was noted June 18, 1962. 369 U. S. 921, 8 L. Ed. 2d 502.

II.

JURISDICTION.

This being an appeal from an order (R. 204) granted by a special three-judge court convened pursuant to 28 U. S. C. A., Sections 2281, 2284, enjoining state officials from the enforcement of state statutes on the ground of their alleged repugnancy to the Constitution of the United States, the jurisdiction of this court on direct appeal is authorized by 28 U. S. C. A., Section 1253.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

The Georgia statutes, the validity of which is drawn in question in this case, are Ga. Code Ann., Sections 34-3212 through 34-3218, inclusive, particularly Sections 34-3212 and 34-3213, as amended by an act approved April 27, 1962 (Ga. Laws, 1962 Ex. Sess., p. 1217). These statutes are set forth in "Appendix A".

IV.

QUESTIONS PRESENTED.

1. Whether a county unit method of conducting primary elections for nomination of candidates for Governor, United States Senator and other state house officers, in force by custom and practice for over 100 years, and by statute for 45 years, is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. Whether said statutes, as applied to primary elections conducted by political parties for nomination of

candidates for United States Senator, violate the Seventeenth Amendment to the Constitution of the United States, requiring that elections for Senator be "by the people".

3. Whether the constitutional adjudication here was premature in view of the fact that on the same day that the case was heard, an amendment to the statute under attack was enacted which required that in any event before a candidate could be declared the nominee of the party as a result of the first primary, he must not only receive a majority of county unit votes, but also a majority of all popular votes cast, failing whereof a run-off primary would be conducted between the candidates receiving the highest unit vote and popular vote, respectively.

4. Whether the court below erred in granting an interlocutory injunction against enforcement of the state statutes in question.

5. Whether the court below erred in refusing to dismiss the complaint on motion by defendants.

6. Whether a state, consistently with the Fourteenth and Seventeenth Amendments, and in view of the fact that final election is by popular vote, may insure an adequate diffusion of electoral power so as to achieve a reasonable balance between rural and urban areas, by requiring that primary elections conducted by political parties be conducted and the votes cast therein be consolidated and tabulated according to the county unit method, whereby each county is assigned a prescribed number of unit votes, to be received by the candidate receiving a plurality of popular votes cast in each such county, the unit votes being allocated among the counties according to population pursuant to a bracket system graduated with each succeeding higher population bracket.

V.

STATEMENT OF THE CASE.

This case is an appeal by the Democratic Party of Georgia and its designated officials, and the Secretary of State of Georgia, from an injunction rendered by a special three-judge district court, declaring unconstitutional in part certain Georgia statutes governing conduct of primary elections, and enjoining said officials from enforcing and giving effect to said statutes[1] in the statewide primary set by law[2] to be held on September 12, 1962, or any other primary, for nomination of candidates for Governor, United States Senator, and various state house offices. The General Election is to be held on the Tuesday after the first Monday in November, 1962.[3]

On March 26, 1962, the same date of this Court's decision in **Baker v. Carr**, 369 U. S. 186, plaintiff, appellee herein, filed complaint (R. 1) in the District Court for the Northern District of Georgia, alleging that he was a citizen and registered voter in Fulton County, Georgia, the state's most populous county; that he plans to vote in the Democratic primary on September 12, 1962; that defendant party and its officials are undertaking to conduct said primary in accordance with the "county unit" method as prescribed by statute; that defendant Fortson as Secretary of State will certify the names of the Democratic nominees so chosen to the several ordinaries for insertion on the general election ballot; and that said

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[1] Ga. Code Ann., Sections 34-3212 through 34-3218, as amended, set forth in Appendix A.

[2] Ga. Laws 1962, p. 15.

[3] Ga. Constitution, Art. III, Sec. IV, Par. II; Art. V, Sec. I, Par. II.

statutes are violative of plaintiff's rights under the Fourteenth and Seventeenth Amendments to the Constitution of the United States. Various allegations are made undertaking to demonstrate the manner in which it is alleged said statutes discriminate against voters in the more populous counties. Interlocutory and permanent injunction, declaratory judgment and convening of a special three-judge court were prayed (R. 12-14).

The complaint as brought attacked the validity of the County Unit Statutes as they existed up to April 27, 1962.

However, on Thursday, April 27, which was also the same day that the case was heard before the Court below, the General Assembly of Georgia enacted and the Governor approved, an amendment to the statutes under attack.[4]

Consequently, plaintiff's complaint and many of the exhibits attached thereto are no longer entirely pertinent to the issues in this case, as are some of the evidence and exhibits adduced at the hearing.[5]

Georgia law does not require that nominations by political parties be by primary. The statutes under attack do provide, however, that if a primary is held, the votes cast therein must be consolidated and tabulated according to the "County Unit" method, under which each county is assigned a certain number of unit votes. The candi-

[4] Ga. Laws 1962 Ex. Sess., p. 1217

[5] This is true of the Hammer affidavit (R. 157), which was executed two days before the county unit statutes were amended. It is also true of one of the Gaylord affidavits (R. 170), which dealt with a so-called "equal proportions" proposal considered by the General Assembly during its special session, but which was not adopted. Also, inapplicable is the map of Georgia Counties (R. 177), showing unit vote distribution prior to the 1962 amendment. Some of the facts recited in the Court's opinion below also are no longer applicable, more particularly those statistics relating to unit vote distribution (R. 184).

date for any given office receiving a plurality of popular votes in any county is deemed to have carried such county, and is entitled to the full unit vote of such county. With respect to Governor and United States Senator, the candidate receiving a majority of the county unit votes over the entire state is entitled to receive the nomination. With respect to other state house offices, only a plurality was required.[6] The unit votes allocated to each of the state's 159 counties were allocated on the basis of the representation accorded each county in the House of Representatives of the General Assembly, each county receiving 2 unit votes for each member of the House.[7]

Such was the state of the law when the complaint was filed. However, as previously noted, the law was amended by the General Assembly while the case was being argued. The effect of this amendment was to raise the total unit vote from 410 to 547, and to accord the larger counties substantially more unit strength. For example, Fulton County was raised from six to forty units. Under the 1962 amendment, unit votes were no longer tied to representation in the House of Representatives, but a bracket system was prescribed which gradually reduced the percentage of unit votes per given number of persons in each succeeding larger population bracket. A table showing

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[6] Ga. Code Ann. 1961, Cum. Pocket Part, Sec. 34-3213. The 1962 amendment now requires a majority as to all offices affected thereby, and not just Governor and Senator.

[7] There are 205 members of the House of Representatives, thereby resulting in 410 unit votes prior to the 1962 amendment. These 205 representatives are apportioned by the Constitution as follows: To the eight most populous counties, three representatives each; to the thirty counties having the next largest counties, two representatives each, and to the remaining 121 counties, one representative each. Ga. Const., Art. III, Sec. III, Par. I. This apportionment is required to be changed every ten years within the limits of the above formula, Id., Par. II, and unlike the situation in *Baker v. Carr*, this course uniformly has been followed. See, F. G., Ga. Laws 1961, p. 111.

the unit vote distribution under the law as amended, together with a comparison with the distribution of 1910 is attached as "Appendix B".

Another very substantial change was made in the law. In order to be elected at the first primary, the law as amended required that a candidate receive not only a majority of unit votes, but also a majority of popular votes. If any candidate failed to so do, a second or run off primary was required to be held between the candidate receiving the highest number of unit votes and the candidate receiving the highest number of popular votes.[5] The candidate receiving the highest number of unit votes in the second primary prevails. Code Ann., Section 34-3212, 34-3213, as amended (Ga. Laws 1962, Ex. Sess. p. 1217).

The plaintiff filed amendment, attacking the validity of the law, as amended (R. 79). A special three judge court was convened, and the matter came on for hearing on April 27, 1962, defendants having filed answer (R. 65) and motion to dismiss (R. 62).

At the hearing the contentions of the plaintiff, as gleaned from his amended complaint and oral argument,[6] emerged as follows:

> 1. The statutes deny equal protection because of "reversal" of the vote of a voter in any county casting his vote for a candidate who did not receive a plurality of popular votes in that county; (2) The

[5] In the event one candidate received both the highest unit vote and the highest popular vote, the law specifies that he runs in the second primary against the candidate receiving the next highest popular vote.

[6] The transcript of proceedings below was not designated to be sent up, due to the imminency of the September primary and the shortness of time. However, the parties stipulated that either side might refer to it on appeal (R. 208). The transcript contains little of value, consisting mostly of argument.

statutes deny equal protection because of "dilution" of the votes in the more populous counties as compared to the smaller counties. In this respect, plaintiff contended alternatively that (a) any dilution was constitutionally impermissible, and (b) in any event, the disparity here was so great as to be "invidious"; (3) The statutes violate the Seventeenth Amendment requiring that senators be "elected by the people".

Also, while the hearing was in progress, the court was advised of passage and approval of the amendments to the statutes under attack, whereupon defendants orally moved for dismissal on the ground that the case was thereby rendered moot, and no controversy would be ripe for determination until a situation arose requiring a runover. This motion was denied.[10]

The case was heard primarily on the affidavits and exhibits adduced by plaintiff, and the verified answer of defendants (R. 65). The only oral evidence adduced was testimony by plaintiff establishing his residence, citizenship and party affiliation.

On the following day, the Court rendered decision declaring the statutes unconstitutional in their present form, and granting injunction against their enforcement. The Court expressly held that a county unit system of primary nominations was not illegal *per se*. It did hold, however, that the allocation of unit votes as contained in the

[10] See Note 9, supra. The motion was predicated upon so much of Section 34-3212 (c), as amended (Ga. Laws 1962 Ex. Sess., pp. 1217, 1220), as declares that that ". . . provided, however—no political party holding a statewide primary for the nomination of candidates named in this section, as amended, shall declare any candidate for such office the nominee of said party for such office unless such candidate shall have received in the primary a majority of all the county unit votes as hereinbefore provided for, *and also a majority of all the popular votes cast in such primary*"

amended law effectuated invidious discrimination against plaintiff and those of his class (1) "In failing to accord the unit of plaintiff a reasonable proportion of the whole," and (2) "In failing to accord the units representing a majority of the population a reasonable proportion of the whole" (R. 202).

Motion for stay was denied below on May 4 (R. 212), and Notice of Appeal was filed May 2, 1962.

Subsequent to docketing of this case in this Court, several matters have transpired which should be related here.

First, on May 25, 1962, a three-judge district court sitting in the Atlanta Division, and composed of the two Circuit Judges who presided here, with another District Judge, held that the existing apportionment of the Georgia General Assembly was unconstitutional. **Toombs v. Fortson,** 205 F. Supp. 248 (D. C. Ga. 1962). By subsequent opinion rendered September 5, 1962, the same Court unanimously approved the minority report of the Reapportionment Study Committee.[11] This report recommended reapportionment of the State Senate so that each of the states' 54 senatorial districts would contain substantially the same number of persons. The House of Representatives remains as is under this plan.

Subsequently, the Governor called a second Extraordinary Session which convened on September 27, 1962, to consider the problem of reapportionment. This session culminated on October 5 with an act adopting without substantial change[12] the minority Report above referred

[11] Created in the first 1962 Special Session. As the resolution creating the committee was not a joint one, it was not published in the 1962 Laws.

[12] The only change made from the plan as approved by the Court involved the shifting of counties from one district to another, but the number of inhabitants per district was not materially altered.

to. The "rotation system" of selecting senators was abolished.

This development may have some bearing on the issues of this case, in view of plaintiff's contention below to the effect that the county unit method of nominating state-house executive and judicial officers was rendered more susceptible to constitutional attack because of the alleged mal-apportionment of the legislative branch of state government.[13]

Second, the State Democratic Executive Committee met on June 27, 1962, and by rule provided that the September primary should be held on a popular vote basis. In the event no candidate received a majority of the popular votes cast for any office, a run-off primary was required between the two candidates receiving the highest popular vote.

The Democratic Primary was held on September 12, 1962 on a popular vote basis. The successful candidate for Governor received a majority of both popular and county unit votes cast, as was the case in all other state-wide races, except the race for Lieutenant-Governor. In this race, Peter Zack Geer received a majority of county unit votes on the first ballot, but he did not receive a majority of the popular votes cast in the seven-man race, although he did receive a plurality. Subsequently, a run-off was held on September 26 between Mr. Geer and the candidate who received the next highest popular vote, and Mr. Geer received a majority of both popular and county unit votes in this run-off.

Therefore, so far as concerns the office of U. S. Senator and all other state-wide races, different results would not have occurred this year had the county unit system been in effect.

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[13] See affidavit of Gaylord (R. 129, 131).

The June 27th action of the Democratic Executive Committee and the results therefrom do not make this case moot, because the judgment below (R. p. 204) enjoined the defendant from conducting **any** party primary under the county unit method of counting votes, whether by virtue of statute or party rule, where the allocation of units violates the standards set forth by the Court's opinion. It also enjoins them from giving effect to any primary so held.

VI.

SUMMARY OF POSITION.

1. **The County Unit System Is Sustained by History.** The history of this Country, and the Federal Constitution in particular, demonstrate that the founding fathers effected a compromise between the French and English schools of thought, and the resulting product was a republican form of government, more closely identified with English ideas than with the French theories of equality. In Georgia, the first governor was elected by two members from each county delegation to the state's unicameral legislature. When political parties first became prevalent, nomination was by convention, each county being entitled to a number of votes equal to, and later, twice, the number of representatives to which such county was entitled in the lower house. This same relationship was carried over into the realm of primary nominations, first by party practice, and in 1917, by statute. Thus it is seen that throughout Georgia's history, county unit determination has prevailed.

2. **The County Unit System Is Sustained by Law.** The county unit act has been before the courts on four prior occasions, and has always been upheld. The decision of this Court in **South v. Peters** appears to be a ruling on the merits. The Act is likewise sustained by principles an-

nounced in **MacDougall v. Green**, and numerous cases distinguish this case from the typical legislative malapportionment situation represented by **Baker v. Carr**. The Court below upheld a unit system *per se*, and such a system has long been in vogue in the National Democratic Party Conventions.

3. **The County Unit System Is Not Invidiously Discriminatory.** The county unit system is far more proportionate to population now than in 1950 when it was upheld in **South v. Peters**, and is substantially the same from a standpoint of population as when adopted by statute in 1917. Equal protection relates to persons, not areas.

4. **The County Unit System Does Not Violate the Seventeenth Amendment.** The purpose of the amendment was not so much **for** a new system of choosing senators as it was **against** the evils of the old system, under which state legislatures were corrupted, and often dead-locked for many months.

5. **The Constitutional Adjudication Here Was Premature.** Under the 1962 Amendment, a candidate could not prevail at the first primary unless he received a majority of both unit and popular votes. Even had the Act been in effect and operative during the 1962 Democratic Primary, different results would not have occurred. The decision below was therefore premature.

6. **The Decree Below Was Too Broad.** The decree below not only declared the Act void, but undertook to state how it should be rewritten, and for this reason is too broad.

VII.

ARGUMENT.

I. The County Unit System Is Sustained by History.

Agreeing with the Court below that one test of rationality is "whether or not the unit system has a historical basis in our political institutions, both federal and state" (R. 200), and cognizant of the principle that "tradition and the habits of the community count for more than logic," **Laurel Hill Cemetery v. San Francisco**, 216 U. S. 358, 366, 54 L. Ed. 515 (1910), appellants at the outset expect to demonstrate the long standing historical basis for the county unit system. The matter will be considered both as a general proposition, and with particular reference to Georgia.

(a) In General.

The county unit system relates to the nomination of candidates for state-wide executive and judicial offices, and the United States Senate. As such, it is certainly not the election itself, but it is to some degree part of the process by which the voter participates in the democratic process of government at the executive and judicial levels, as well as at the legislative level as respects the office of United States Senator.

"Consequently, there is some similarity between the voter's status in electing such officers and his status in electing representatives in the legislative branch of government, and for this reason, a brief discussion of the latter seems relevant here.

The evolution of representative government in England has been well traced by Charles A. Beard and John D.

Lewis.[14] Initially, of course, the King was law-maker, and parliaments were convened primarily for the voting of taxes. "The original parliament did not represent people —free and equal heads—as such, but the estates of the realm (the nobility, clergy, landed gentry, and burgesses of the towns); in a strict economic sense, two estates, i. e., land and commerce."[15] In the second stage, the tax-voting body gradually became a law-making body, for as the lords and nobles met together in parliament, it was inevitable that they should discuss their grievances. These grievances would be set forth in a petition to the king, which if he signed, would become a law. Since the parliament had the purse strings, it could often force the king to consent. In time, the petition was dropped in favor of the bill.[16]

The third and fourth stages are described thusly:

> "3. The third stage was reached by a gradual process culminating in the revolutions of the seventeenth century. At last, the king was substantially deprived of law-making and tax-voting powers, and his civil and military administration was confined within the limits laid down in constitutional measures. In other words, the estates summoned in the beginning to supply the royal treasury became conscious of their potential powers and transformed themselves into a sovereign body. Their crowning act was to compel the king to choose his chief officers of state, his cabinet or inner council, from the party that had a majority in Parliament. Although an elaborate ideology was developed in the course of this struggle,

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[14] "Representative Government in Evolution," 26 Am. Pol. Sci Rev. 223 (1932)

[15] Id., p. 231.

[16] Id., pp. 232-5

the operation itself involved a concern with very practical matters, largely economic in character, rather than a moral straining after a general ideal or the best of all possible worlds. When once the ruling classes represented in Parliament gained their ends, they settled down to the enjoyment of the spoils of office in the fashion meticulously described by L. B. Namier in **The Structure of Politics at the Accession of George III.**

4. The economic estates that made themselves sovereign through representative institutions had not long enjoyed the fruits of their labors when rumblings were heard below, among the nameless and unhonored masses that had not shared in the process —serfs who, though rightless in the Middle Ages, had now become freeholders or agricultural laborers, craftsmen in towns, and other persons from whom the suffrage had been withheld. Indeed, these rumblings had been heard early—in the time of the Peasants' Revolt during the Middle Ages, and especially in the tempestuous age when Cromwell was upsetting the throne. But they were turned into a loud roar by the French Revolution, whose prophet, Rousseau, declared that all men were equal, and that each one was entitled to an equal share in governing. This, of course, was flatly contradictory to the system of English classes, but in time it prevailed—with the gradual extension of the suffrage until in our own time all adult men and women, as such, without regard to property are included within the political pale. And this extraordinary outcome, entirely unforeseen by the founders of representative institutions, was largely the result of a movement of economic, intellectual, and educational forces outside the sphere of legislation and administration."

In the United States, when the founding fathers came to draft the Constitution of the United States, they found themselves divided generally into two camps.

On the one hand, the political thought of Hamilton, Adams and their school of federalist sympathizers was English in complexion, and was dominated by an economic interpretation of history, inspired by the writings of Harrington, Locke and Adam Smith. As stated by Locke, "The great and chief end, therefore, of men uniting into commonwealths and putting themselves under government, is the preservation of their property."[17] Therefore, since the great masses of people were without property, government must be so constituted as to protect those having property from those without it, and in this state of things, there could be no place for a pure democracy, with its ideas of equality.[18]

On the other side of the political fence was Thomas Jefferson, who received his inspiration from the French Revolution and its school of writers, Rousseau, and Paine. Jefferson favored an agragian democracy.[19] The major premise of Paine was that sovereignty inheres in the majority will: "That which a nation chooses to do it has a right to do."[20] Paine bitterly attacked Burke's conception of a government based on a perpetual **civil** contract, an idea borrowed from the law of property. To Paine, the proper basis was a revocable **social** contract, in which every age is free to act for itself.[21] The notions of equality and majority will were inexorably united in this philosophy.

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[17] *Second Treatise on Civil Government*, Chap. IX.

[18] Hargington, *Main Currents in American Thought*, Book III

[19] Id., p. 347

[20] Id., p. 333

[21] Id., p. 334-5

Throughout the Convention, the clash of these two divergent factions dominated the proceedings, but the English school had the upper hand. The end result was the adoption of a republican form of government as a compromise between the constitutional monarchy of Hamilton and the democracy of Jefferson, but the final product was more English than French. As stated by Harrington:

> "Not until French romanticism popularized the doctrine of social equalitarianism was there any serious questioning of the principle of the economic basis of politics. The fact of property rule was challenged in America no more than in England, and the laws of suffrage in the several states were founded on that principle. The new state therefore, took its shape from men who were political realists, deeply read in the republican literature of the seventeenth century, and inspired by the ideals of the rising English middle class. The opponents of the new state, on the other hand, were economic liberals who rejected English middle-class ideals, and inclined increasingly to the humanitarian theory of the French thinkers, though with an eye always upon American conditions. The struggle between these two schools of thought determined the final outcome of a long and acrimonious contest."

> "During the period with which we are concerned, American thought, become militantly self-conscious but still vague and inchoate touching any ultimate program, drew inspiration from both sources; but the deeper, controlling influence came finally to be English rather than French."

Beard and Lewis, supra, are in agreement, for they observe:

> "The Fathers of the American Constitution believed in representative and republican government, but they

feared the populace as they feared original sin. One of their fundamental purposes in shaping the form of the federal government was to break the force of majority rule at its source in elections and in the operation of the government itself. In itself, therefore, representative government need not be republican or democratic. It may be monarchical, or aristocratic, or so designed as to prevent the kind of popular government which operates through simple majorities."[22]

The United States Senate is itself evidence of this fact: Madison and Wilson at the outset insisted on founding both branches of the government on popular will of the people as a whole, but they lost on the matter of the Senate. Charles Warren, **The Making of the Constitution**, p. 136.

On June 11, 1787, the Philadephia Convention voted 6 to 5 to elect the Senate on the same basis as the House, proportionate to population, but actually elected by the States (Id. at 24); however, the matter was debated at length on June 30, and when the Convention met on the following Monday, a tie vote resulted on Ellsworth's motion for equality of representation in the Senate (p. 261). A committee was appointed (p. 264) and finally, on July 16, 1787, its report was adopted, 5 states to 4, referred to as the "Great Compromise." Had not this compromise been effectuated, the Convention would have failed (p. 309), and even had the convention adopted proportional representation in the Senate, the Constitution would never have been ratified by the people (p. 310). On July 23, it was voted that each state should have two senators (p. 346).

Very recently, it has been asserted that the federal analogy has no true application to the problem of state

[22] 26 Am Pol Sci Rev at 228

representation,[23] an argument predicated on several premises, first that the federal arrangement was born of the necessity of establishing a federal government at all events, and constitutes an arrangement now deemed antiquated, and second, that states bear a different relationship to the federal government than do political subdivisions to a state. The answer to the first is that regardless of whether the existing system be deemed outdated, its adoption reflects a national purpose which the people have not seen fit to endeavor to change, assuming such to be possible.[24] With respect to the second, the so-called "sovereignty" argument, i. e., that a state is sovereign, whereas a political subdivision of a state is not, it is enough to say that, contrary to some opinions, the Senate was not designed for the purpose of representing the States in the national Congress, but as a check against the House of Representatives.[25]

These arguments against the federal analogy were also recently answered in **Maryland Committee v. Tawes**, ... Md. ..., 31 Law Week 2155 (1962), where the Court declared:

> "The very purpose of having two houses was that each would be a check upon the other and prevent the passage of hasty and ill-conceived legislation. A different method of selection was essential to the bicameral plan. No more natural or logical basis could be suggested than that the viable and long established political subdivisions be accorded representation, as they had been in election of electors under the Constitution of 1776.

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[23] McKay, Reapportionment and the Federal Analogy, National Municipal League, August, 1962.

[24] See Constitution, Art. V.

[25] Charles Warren, supra, at 104.

"The bicameral concept is not one that had become obsolete with the passage of the years. It has been repeatedly recognized by Congress and the President, subsequent to the adoption of the Fourteenth Amendment, in approving the constitutions of the states seeking admission to the Union.

"The (urban voters) argue that the Federal Constitution furnishes neither analogy nor precedent for the composition of the Maryland Senate, on the ground that the states which adopted the Federal Constitution were sovereign bodies. The argument overlooks the fact that thirty-seven states were admitted to the Union after 1789, which were not and had never been sovereign bodies, with the possible exception of Texas.

"In any event, the consequence and effect upon voting rights are the same, whether the voter be voting for United States senator or state senator. We think it is hardly conceivable that a different principle would apply in one case than in the other.

"We are of course aware that the government of the United States, within its delegated powers, may possess rights not retained by the states. But where civil rights are concerned there is still truth in the ancient adage that what is sauce for the goose is sauce for the gander. When the Supreme Court held in **Brown v. Board of Education**, 347 U. S. 483, that the Equal Protection Clause prohibited the states from maintaining racially segregated schools, it also held in **Bolling v. Sharpe**, 347 U. S. 497, decided the same day, that the Federal Government was likewise barred by the Fifth Amendment. The relation between the two amendments seems sufficiently close to negative a conclusion that a provision like that for the Federal Senate, U. S. Const., Art. I, sec. 3, would be offensive to either."

However, one does not have to study the legislative history of the Constitution in order to discern that equality of representation did not rule the day. The Constitution itself by its clear language manifests such a proposition — a proposition never more eloquently stated than by Judge Sibley's *per curiam* opinion in a 1950 decision upholding the Georgia county unit system, **South v. Peters**, 89 F. Supp. 672 (D.C. Ga. 1950), aff'd 339 U.S. 276, 94 L. Ed. 834 (1950), where it was said:

> "In general, that Constitution is not committed to elections by the people over the whole affected territory in which every vote will have equal weight, but rather the voting is by smaller units of unequal population and unequal voting power for each vote. The voting unit is never the whole United States but always the vote is by States, or smaller subdivisions as Congressional Districts under Congressional and State Statutes. The Constitution begins, 'We the people of the United States ... do ordain and establish this Constitution for the United States of America'; but the people thereof never voted on it. Amendments thereto, under Article V affect the whole country, but are not voted on by the country, but by State units. The President is the President of the whole country, but is not elected by the equal votes of the people but by electors in each State appointed in such manner as the Legislature thereof may direct'; some of the electors are in proportion to population roughly, but two are from each State regardless of population. The only federal elections by the people were originally for the Representatives, apportioned to each State with regard to its population; and now by the Seventeenth Amendment Senators in identical words are to be elected by the people of each State; two Senators from each State though in population Rhode Island and Nevada differ

in population from New York, Pennsylvania and California as much as Fulton County does from Georgia's smaller counties. The voters for Senators and Representatives are those in each State qualified to vote for the members of the most numerous branch of the State Legislature, and Congress cannot change that. By Article 8, Sec. 4 (1), 'The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by law make or alter such regulations . . . .' The Congress under this power has fixed the manner of holding elections for Representatives, and ordained that they shall not be State-wide, but by Congressional Districts. See **Wood v. Broom**, 287 U. S. 1; and **Colgrove v. Green**, 328 U. S., at page 555. Congress has not fixed the manner of holding elections for Senators, so they remain under the power of the State Legislature unless and until Congress sees fit to regulate.

True it is that Article IV, Sect. 4, provides, 'The United States shall guarantee to every State in this Union a republican form of government,' but this does not mean pure democracy. The Supreme Court has consistently held from **Luther v. Borden**, 7 Howard 1, to **Pacific States Tel. Co. v. Oregon**, 223 U. S. 118, that it is for the Congress, the political department of the government, to define a republican form of government and to effectuate the guaranty, and not for the Courts. But we may fairly assume that the Constitution itself is a satisfactory form and that the Constitutions of the ratifying States were esteemed such, as well as those of States since admitted to the Union. We have just seen that the federal Constitution does not employ elections by the people over the entire affected territory at all. The Constitution

of Georgia of 1777, in effect when Georgia ratified the Union, and that adopted immediately afterwards, had no State wide elections with votes of equal weight, but organized the State and operated it wholly on the county unit basis, using two port towns as units also, under that of 1777. The Constitution of 1868, approved by Congress in readmitting Georgia to the Union, organized the State by county units substantially as at present, though there were some State-wide elections.

We therefore cannot say there is any general Constitutional principle forbidding or discouraging the use of territorial subdivisions in fixing the manner of conducting an election by "the people."

Another significant indication of the "Undemocratic" nature of our system of Government lies in the example of this Court. During the formative years, John Adams espoused an undemocratic, unheard of notion called judicial review. At this point it should be recalled that the British Constitution and the American Constitution as later interpreted are very different, in that in England, Parliament is supreme.[26]

[26] "Of minor divergences between their work and the British Constitution I shall speak subsequently. But one profound difference must be noted here. The British Parliament had always been, was then, and remains now, a sovereign and constituent assembly. It can make and unmake any and every law, change the form of government or the succession to the crown, interfere with the course of justice, extinguish the most sacred private rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people's rights and powers resides in it, just as if the whole nation were present within the chamber where it sits. In point of legal theory it is the nation, being the historical successor of the Folk Moot of our Teutonic forefathers. Both practically and legally, it is today the only and the sufficient depository of the authority of the nation, and is therefore, within the sphere of law, irresponsible and omnipotent.

In the American system there exists no such body. Not merely Congress alone, but also Congress and the President combined

This idea of Adams has been well summarized:

> "In its relation to current English constitutional practice it was at once revolutionary and reactionary. It implied a double attack upon parliamentary sovereignty, first in limiting its powers by a super-parliamentary constitution, and then in subjecting its acts to judicial review. The final result would be the transfer of sovereignty from the legislature to the judiciary. The idea had been toyed with by English lawyers, but never seriously considered; it was alien to the whole theory and history of parliamentary development. English landed gentlemen have never been minded to grant the veto power to the judiciary, but have persistently retained sovereignty in the legislature. Nevertheless in such early speculation is found the germ of our later practice, as it finally developed through the decisions of Chief Justice Marshall."[27]

Another oracle, although of later vintage, frequently consulted on this subject, is John Stuart Mill, whose **On Representative Government** is much quoted by equal-representation advocates. It is true that Mill declares in one place that,

> ". . . for there is not equal suffrage where every single individual does not count for as much as any other single individual in the community."[28]

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are subject to the Constitution, and cannot move a step outside the circle which the Constitution has drawn around them. If they do, they transgress the law and exceed their powers. Such acts as they may do in excess of their powers are void, and may be, indeed ought to be, treated as void by the meanest citizen." Bryce, *The American Commonwealth*, Vol. I, pp. 32-33.

[27] Harrington, supra, Book III, p. 310.

[28] Supra, p. 54 (People's Edition).

In like view, Mill urged a broadened electoral base,[29] but only those who pay taxes should elect those who levy them; educational requirements should be imposed, and those on relief should not be permitted to vote.[30] However, frequently overlooked is Mill's insistence that votes should be weighted according to competency.[31]

In **The Federalist**, No. 10, Madison declared:

> "From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possession, their opinions, and their passions.
>
> "A republic, by which I mean a government in which the scheme of representation takes place, opens

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[29] Id., p. 67.

[30] Id., pp. 68-69.

[31] Id., pp. 70-71. "It is not useful, but hurtful, that the Constitution of a country should declare ignorance to be entitled to as much political power as knowledge" (p. 73).

a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

"The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

"The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose."

In the light of the historical evolution of this Country, it is difficult to comprehend such statements as recently made by a majority of a conference called by the Twentieth Century Fund on June 15, 1962, who declared, "It was the agreed consensus of the conferees that in the light of democratic principles, of history and of contemporary political theory, the only legitimate basis of representation in a state's legislature is people. One man's vote must be worth the same as anothers." **One Man—One Vote**, p. 3 (1962). The statement did not, however, go unchallenegd, for Professor Alfred De Grazia, the foremost member of the conference, filed dissent, in which it was stated:

"The statement says: 'The central fact is that any basis of representation other than population gives one citizen's vote greater value than another's. There is no justification in our democratic heritage, in logic or in the practical requirements of government for choosing such a course.' To this I say that **every** basis of representation, including population, gives one citizen's vote greater value than another's. That is, every device of government works to give different weights to different ideas and people. Hence, any newly imposed procedure or established procedure takes from some interest and gives to another. Furthermore, it is **completely erroneous in fact and principle** to say there is no justification in our democratic heritage, in logic, or in practical requirements of government for choosing such a course. There are, on the contrary, practices and justification in all three regards, each in its own way as important or more important than the equal-population doctrine. Making way for the active participation of the people in elections and government is very important. At the same time, the **Federalist** papers, the U. S. Constitution and all the State Constitutions, and indeed the prevailing doctrines and practices through history and around the world, incorporate and defend principles such as the representation of communities *per se*, the representation of interests of functional groups such as business, unions and associations, the interests of minorities, and the interest of 'efficient' administration'.

"The statement shows little appreciation of the true problems of its own pretended beneficiaries, the mass of people and the cities. A few unproven allegations tying the evils of the cities to the apportionment of State legislatures are not enough. There are, besides, no suggestions for research of this subject,

which was one of the reasons for calling the Conference. More importantly, the statement does not envision what I should regard as a task precisely suited to the history and character of the Twentieth Century Fund, namely the study of a new system of representation for the new America. Lacking this larger and more significant vision, the statement becomes less useful and might be unfortunately construed as intended to fit the needs of a current political controversy."[32]

(b) The County Unit System in Georgia.

The decision of the Court below (R. 185) contains a fair account of the history of the county unit system, as do the opinions in **Turman v. Duckworth**, 68 F. Supp. 744, 746 (D. C. Ga., 1946), app. dism. 329 U. S. 675, and in **South v. Peters**, 89 F. Supp. 672, 676 (D. C. Ga., 1950), aff'd 339 U. S. 276. It will be seen that up until the adoption of the Act of 1962, representation in party nomination was tied to representation in the lower house, first in convention nomination, and later in the direct primary.

No careful study has been made of the organization of political parties in Georgia prior to the Civil War. It is known that in the early 1830's factions in the Board of Trustees of the University of Georgia served as executive committees of the Troup and Clark parties, and that nom-

[32] Professor De Grazia's views are more fully set out in an article, *"General Theory of Apportionment,"* 17 Law and Cont. Prob. 256, 257 (1952), where he declares: "No system of apportionment and no system of suffrage, balloting is neutral. The process of apportionment, like the other stages in the process of representation, is a point of entry for preferred social values. The existing system of apportionment, whether legal, illegal, or extralegal, institutionalizes the values of some group in a society." De Grazia enumerates the various bases of apportionment as territorial surveys, governmental boundaries, official bodies, functional divisions of the population, and free population alignments.

inations for Governor were customarily made at caucuses held in Athens on commencement day at the University. (Ulrich Bonnell Phillips, **Georgia and State Rights**, Washington, Macmillan Company, 1928, pp. 187-203 206.) By 1840 parties in Georgia had developed the practice of holding state conventions to nominate candidates for Governor, for Congress, and for the electoral college. (Horace Porter Edmond, Jr., **Democratic Party Organization in Georgia**, Unpublished M. A. Thesis, University of Georgia, 1948, p. 1.)

During most of the period before the Civil War, Georgia had a bi-party political organization. The party formed by James Jackson, William H. Crawford and Michael Troup, and allied nationally with Jefferson's Republican Party, dominated the political scene at the opening of the nineteenth century, but party organization was not strong in the period prior to the constitutional amendment of 1825 which provided for popular election of the Governor. By this time a rival party known by the name of its leader, John Clark, had arisen. The two parties were differentiated more on economic and social grounds than any other, the aristocrats tending to be in the Troup Party. Division of the Jeffersonian-Republican Party into two wings during the period of Andrew Jackson was paralleled in Georgia by the rise of a State Rights and a Union party, the former largely a continuation of the Troup Party and the latter made up principally of Clarkites. In national politics the States Rights Party allied itself with the Whigs and the Union Party with the Democrats.

The political strength of the two Georgia parties was about equal in the decade of the forties. After the adoption of the district system for the election of representatives to Congress in 1844, the eight districts of the state were at first evenly divided between the two parties. In 1848, the Whigs permanently lost one of their districts.

and in 1850 another, but the 7th and 8th districts, represented by Robert Toombs and Alexander H. Stephens, remained Whig until the final overthrow of that party. The Democrats elected most governors of the state during the period, but the Whig opposition was always vigorous, and frequently controlled the General Assembly. After the Kansas-Nebraska controversy of 1854, Toombs, Stephens, and most of the former Whigs went over to the Democratic Party. Factional differences prevented the state from uniting immediately into one party, but by 1860 most Georgians belonged to the Democratic Party (Albert B. Saye, **A Constitutional History of Georgia, 1732-1945**, Athens, The University of Georgia Press, 1948, pp. 196-219; and Richard Harrison Shryock, **Georgia and the Union in 1850**, Durham, Duke University Press, 1926, pp. 217-363, *passim*.)

The evidence available indicates that representation in State conventions of political parties in the period before the Civil War was by counties, each county being entitled to the same representation it had in the General Assembly. Thus, in the State Rights Party Convention held in Milledgeville in June, 1840, each county was invited to send as many delegates as it had members in the General Assembly. (See the following contemporary newspapers: **The Columbus Enquirer**, January 1, 1840; the **Augusta Tri-Weekly Chronicle and Sentinel**, May 28 and June 6, 1840; and the Macon **Georgia Messenger**, June 11, 1840.) The State Rights party used this same basis of representation in its convention held in Milledgeville in November, 1841 (The Milledgeville **Southern Recorder**, November 2 and 16, 1841). The Union (Democratic Republican) Party also based representation in its State convention on each county's representation in the General Assembly. (See the Augusta **Georgia Constitutionalist**, November 20 and 27 and December 11, 1841.)

In the period following the Civil War and Reconstruction, the Democratic Party became the dominant party in Georgia, and the available evidence indicates that this party used a county unit rule of representation in its state conventions. For example, in the convention of the Democratic Party in 1876, counties were entitled to two, four, or six votes, depending upon their representation in the House of Representatives, and a county's votes were cast as a block (**Atlanta Constitution**, August 1, 1876). The same was true of the Convention of 1880 (**Atlanta Constitution**, August 6, 1880).

Although the county unit rule continued to be the basis of voting strength in nominating candidates for office in the State convention of the Democratic Party, the introduction of the direct primary in the closing years of the nineteenth century greatly altered the actual political process of nomination. Prior to 1898 there was no uniform method of selecting delegates to state and district conventions, the matter being left to the discretion of county executive committees. Mass meetings of all interested Democrats and appointment by executive committees seem to have been the most general practices. As early as 1874 the Democratic Executive Committee of Fulton County provided for popular election of convention delegates, and in 1886, thanks to the influence of Henry Grady and the **Atlanta Constitution**, approximately half the counties held primaries in which the people voted upon the two leading candidates for governor before delegates to the state convention were selected. In 1892 the State Democratic Executive Committee recommended the use of primary elections to the county executive committees, and in 1898 the State Committee formulated rules, including a specified date for the primary that were mandatory. The primary thus became a statewide institution. Party conventions were thereby transformed into agencies for

ratifying nominations already made by popular vote, but still upon a county unit basis.

The notable exception to the nomination of Democratic candidates by county unit votes was the election of 1908. In that year the State Democratic Executive Committee provided that nomination should be by popular vote (**Atlanta Constitution** February 7, 1908). The convention of that year voted to restore the county unit system of nomination (**Atlanta Journal**, June 23, 1908). Thus the provision in 1917 by State law for the use of the county unit system of nomination by political parties in primary elections was firmly grounded in custom.

2. **The County Unit System Is Sustained by Law.**

As indicated in the foregoing history, Georgia's county unit system of party nominations has existed in practice for over a hundred years. It was enacted into law in 1917 (Ga. Laws 1917, p. 183).

It was 29 years later before it was to be challenged in the Courts. In **Cook v. Fortson**, 68 F. Supp. 624 (D. C. Ga. 1946), a resident of Fulton County, one of three counties comprising Georgia's Fifth Congressional District, brought suit attacking the system, and claiming that although Mrs. Mankin, the candidate supported by plaintiff, received a majority of all popular votes cast, the defendant party officials were undertaking to certify another candidate who had received less popular votes, but a larger unit vote. The county unit system in this case, unlike that with respect to U. S. Senator and state house officers, was imposed not by statute, but by party rule. The three-judge court denied relief, citing **Colegrove v. Green**, 328 U. S. 549, observing also that the party officials had in fact certified both candidates.

The same year, another case was brought arising out of the Democratic Primary for Governor. **Turman v. Duckworth**, 68 F. Supp. 744 (D. C. Ga. 1946). This was a case brought by residents of Fulton and DeKalb Counties, alleging that in the September primary, their votes were cast for Mr. Carmichael, who received a plurality, but not a majority, of the popular votes cast for Governor. It was alleged that Mr. Talmadge had received a majority of county unit votes, and would be certified as the party nominee unless enjoined. The plaintiffs further alleged that Fulton and DeKalb Counties were accorded unit votes far less than that accorded other counties in proportion to population. Pending hearing, the complaint was amended to allege that the party officials had already certified Mr. Talmadge, and it was prayed that the Secretary of State be enjoined from placing his name on the general election ballot. The Court traced the history of the system in Georgia, noting that "Not only in Georgia, but throughout the United States, the great political parties have regarded county representation in nominating their candidates" (p. 747). Relief was denied on the basis of **Colegrove v. Green**, supra, but the Court proceeded to a consideration of the merits for purposes of consideration on appeal, declaring:

> "Nothing is better settled than that legislative classifications are not by it prohibited if there is a rational basis for them. The three most recent Georgia Constitutions have classified the counties into three classes, based on population and to be readjusted after each census. A federal court can hardly say that Fulton and DeKalb Counties ought by virtue of the Fourteenth Amendment to have a fourth class created to give their voters proportional power and influence in the Legislature, or that the smaller counties should be put into another class having no representative

Our system of Government, State and Federal, has never sought or demanded that each voter should have equal voting influence, though that might seem an ideal of democracy. In our federal government under its Constitution each State has in the Senate two 'unit votes,' wholly regardless of population, in the making of all laws, and in confirming treaties and appointments to federal offices. These unit votes also appear in the electoral college in choosing a president, so that there have been presidents who did not receive a majority of the popular votes. The people of the District of Columbia have no vote in their government but are ruled by a Congress elected wholly by others. Touching nominations, all the great political parties in their State and national organizations have followed in their nominating conventions the legislative strength of the States or counties represented, thinking that not to be irrational. Why should it be considered not rational for the Georgia Legislature, in authorizing the substitution of a primary for a convention, to say the same rule should govern in either?" (Emphasis supplied.)

Both cases were consolidated on appeal, **Cook v. Fortson**, 329 U. S. 675, 91 L. Ed. 596 (1946), and ordered dismissed by this Court. Mr. Justice Murphy and Mr. Justice Black were of the opinion that probable jurisdiction should be noted. Mr. Justice Rutledge was of the opinion that the question of jurisdiction should be postponed until the cases were argued. In dismissing the appeals the *per curiam* order cited **United States v. Anchor Coal Company**, 279 U. S. 812, 73 L. Ed. 971 (1929), which stands for the proposition that where a case has become moot pending appeal, the appellate court should dispose of the litigation below by directing dismissal of the complaint. It is difficult to determine to what extent the question of mootness

controlled this Court's disposition of the two appeals, for the decision was rendered October 26, 1946, prior to the November general election, and as pointed out in Mr. Justice Rutledge's opinion, not all the relief prayed for had become moot, as appellants sought relief with respect to certification of the returns of the general election.

The county unit system was next attacked in **South v. Peters**, 89 F. Supp. 672 (D. C. Ga. 1950), where residents of Fulton County brought suit prior to the primary, alleged that they were Democrats and planned to vote in the September primary for candidates for Governor, U. S. Senator, and other state house officers; that although Fulton County had 14.4 per cent of the State's population, it was accorded only 1.46 per cent of the total unit vote; and that this disparity deprived plaintiffs of equal protection, and also was violative of the Seventeenth Amendment, requiring that senators be elected "by the people."

Reviewing Georgia history, the Court observed that "The counties were thus the units of government" (p. 676). The Court accepted the proposition that the primary in Georgia was "state action" as held in **Chapman v. King**, 154 F. 2d 460 (C. A. 5th 1946), but remarked, "Democratic nomination is not however, the equivalent of election nor does it insure it, for much may happen before or in the final election; but the nomination is practically potent and important to voters and candidates" (p. 677). The issue, it was said, "is not like one where a person is denied the right to vote, for here each person is permitted to vote and his vote is counted. The wrong, if any, is to their unit" (p. 678). The Court expressly rejected the Fourteenth and Seventeenth Amendment contentions on the merits, and concluded:

> "But after all this is a State regulation of primaries, not final elections. It relates, not to the Demo-

cratic Party alone, but all parties, strong or weak, usually victorious or otherwise. **A primary never elects, but only nominates.** The voters who turn out and vote for the nominee, determine his election. These nominees have traditionally been chosen by all parties in State Conventions organized and voting in county units. The Neill Act does not command primaries nor abolish conventions, but tells a party that if it chooses to have a primary it must ascertain its result by the old convention standard, and abide by it, the convention no longer having the final choice of nominees. This has been accepted as reasonable until Fulton County by its own growth and absorption of other counties has become unique and wishes unique treatment" (p. 681).

On Appeal, **South v. Peters**, 339 U. S. 276, 94 L. Ed. 834 (April 17, 1950), this Court affirmed *per curiam*, declaring that "Federal Courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." Justices Black and Douglas dissented.

The third case arose in state court in the form of a suit for damages by a voter who claimed that the unit system operated to reverse and dilute his vote in the gubernatorial primary. The Supreme Court of Georgia sustained a judgment of the trial court dismissing the case on demurrer, declaring that a party primary was [illegible]an "election" subject to protection under the Fourteenth Amendment and the Georgia constitutional provisions conferring upon certain persons the right to vote. **Cox v. Peters**, 208 Ga. 498, 67 S. E. 2d 579 (1951). On appeal this Court dismissed for want of a substantial federal question. **Cox v. Peters**, 342 U. S. 936, 96 L. Ed. 697 (1952).

The fourth case is **Hartsfield v. Bell**, 357 U. S. 916, 2 L. Ed. 2d 1363, decided June 16, 1958. In this case Atlanta Mayor, William B. Hartsfield, brought suit alleging that he intended voting in the 1958 Democratic Primary for Governor and other statehouse officers; that the county-unit method was to be employed therein, and that it violates equal protection and the Seventeenth Amendment. On April 1, 1958, Judge Sloan declined to convene a three-judge court as prayed, and later that month petition for mandamus was filed in this Court. On June 16 this Court denied leave to file the petition, the Chief Justice and Justices Black, Douglas and Brennan being of the opinion that a rule to show cause should issue.

Such was the state of the law just prior to this Court's decision in **Baker v. Carr**, 369 U. S. 186, 7 L. Ed. 2d 663, decided March 26, 1962, the same day upon which the instant case was filed. In the Baker case this Court held, first, that the Court was not without jurisdiction to entertain a complaint alleging a denial of equal protection in a state's legislative apportionment. It was stated that neither the **Colegrove** case nor any of the county-unit cases had turned upon a want of jurisdiction (369 U. S. at 202-3). The Court next held that the appellants did not lack standing, as they possessed "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of the issues upon which the Court so largely depends for illumination of difficult constitutional questions" (Id. at 204).

The last of the three propositions decided in Baker concerned "justiciability." To begin with, it was said, the issues could not be denominated nonjusticiable because of any reliance upon the "political question" doctrine, as "the nonjusticiability of a political question is primarily a function of the separation of powers" (Id. at 210), which in

volves generally the relationship of the Court to the other coordinate branches of the federal government, and not the Court's relationship to the States. Challenges to state and congressional legislation under the Guaranty Clause (Art. IV, Sec. 4) were uniformly held nonjusticiable for the reason that the clause "is not a repository of judicially manageable standards which a Court could utilize" (Id. at 223). Since the controversy here did not involve separation of powers in a challenge under the Guaranty Clause, but rather the validity of state action and the Fourteenth Amendment, it was said:

> "Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects no policy, but simply arbitrary and capricious action.
>
> "This case does, in one sense, involve the allocation of political power within a State, and the appellants might conceivably have added a claim under the Guaranty Clause. Of course, as we have seen, any reliance on that clause would be futile. But because any reliance on the Guaranty Clause could not have succeeded it does not follow that appellants may not be heard on the equal protection claim which, in fact, they tender. True, it must be clear that the Fourteenth Amendment claim is not so enmeshed with those political question elements which render Guaranty Clause claims nonjusticiable as actually to present a political question itself. But we have found that not to be the case here."

The **Colegrove** and **South** cases were explained as having turned not on nonjusticiability, but on equity's discretionary power to withhold relief (Id. at 235).

Mr. Justice Douglas, specially concurring, apparently considered **Colegrove** and **South** to have been predicated upon non-justiciability (Id. at 249), and Mr. Justice Clark rationalized the county-unit cases—at least South as being decisions on the merits upholding the state law, for he declared:

> "Finally, the Georgia county-unit-system cases, such as **South v. Peters**, 339 U. S. 276 (1950), reflect the viewpoint of **Mac Dougall**, i. e., to refrain from intervening where there is some rational policy believed the State's system" (Id. at 253).

In a footnote, he stated:

> "Georgia based its election system on a consistent combination of political units and population, giving six unit votes to the eight most populous counties, four unit votes to the 30 counties next in population, and two unit votes to each of the remaining counties."

It is submitted that this appraisal is correct. Certainly, **Mac Dougall v. Green**, 335 U. S. 281, 93 L. Ed. 3 (1948), was a decision on the merits. True, it involved political initiative, but as this like the exercise of the franchise itself affects a person's right to participate in the political processes of government, the distinction is one without a difference. In the **Mac Dougall** case, this Court held:

> "It is allowable State policy to require that candidates for state-wide office should have support not limited to a concentrated locality. This is not a unique policy."

In **Remmey v. Smith**, 102 F. Supp. 708 (D. C. Pa. 1951), dism., 342 U. S. 916 (1952), involving a similar situation, where relief was also denied, a concurring judge declared:

> "What type of discrimination in state elections are forbidden by federal law? Section 1 of the Fifteenth Amendment and Section 31 of Title 8, U. S. C. A., prohibit discrimination on the ground of race, color or previous condition of servitude. The Nineteenth Amendment bans discrimination on account of sex. To interpolate into these provisions the right that an individual's vote in an election for state officers should not be diluted by unequal apportionment but should be equal in weight to each other vote cast in the state would be legislative action by judicial pronouncement."

Dyer v. Kazuhiza Abe, 138 F. Supp. 220 (D. C. Hawaii 1956), dism. 256 F. 2d 728 (C. A. 9th 1959), involved a similar attack based upon failure of the territorial legislature to reapportion as required by the Organic Act, which required periodic reapportionment of both houses according to population. In this case, however, the Court granted relief, but in so doing, distinguished the South case as follows:

> ". . . South v. Peters concerned a state's desire to regionally allocate votes in elections. Here again no local law forbade such action."

and

> "We are not saying each citizen must always have the same vote. Political institutions may invoke geographic representation. However, where the fundamental law provides for equal rights of suffrage each citizen should have the right of judicial redress if

the law is violated. Otherwise his rights under the law can be disregarded with impunity, as indeed they now are in Hawaii and many states."

Scholle v. Hare, 360 Mich. 1, 104 N. W. 2d 63 (1960), involving apportionment of the Michigan Senate, is inapposite. While the Michigan House was already apportioned according to population, the numerous opinions filed in the Michigan Supreme Court were all careful to point out that the Senate apportionment was completely arbitrary, being based neither on area, political units, or population. See 104 N. W. 2d at pages 67, 70, 71, 83, 91. This Court's remand "for further consideration in the light of Baker v. Carr . . . ", 369 U. S. 429 (1962), is explainable on either of two grounds: (1) This Court may have felt that the problem of justiciability, not then resolved by **Baker** when the case was before the state court, may have beclouded the state court's consideration of the constitutional claim, and (2) the decision may be explained by the belief of a majority of this Court that while equal population is not the **only** basis, there must exist some rational basis, as for example, area, political units, functional divisions, tax receipts, or the like.

Recent cases have upheld the validity of a state senate apportionment based on political unit representation. **Maryland Committee v. Tawes**, 31 Law Week 2155; **W. M. C. A. v Simon**, ... F. Supp. ..., 31 Law Week 2121 (D. C. N. Y., 1962); and cf. **Baker v. Carr**, 206 F. Supp. 341 (D. C. Tenn., 1962). **Levitt v. Maynard**, 31 Law Week 2060 (N. H., 1962), upheld apportionment based on tax receipts.

In what is undoubtedly recognized as a leading article on the subject, Lewis, "Legislative Apportionment and the Federal Courts," 71 Harv. L. R. 1057, 1077 (1958), the author declares:

> "There is no constitutional assumption that representation in the state legislatures should be based on units of equal population. Indeed the states would seem constitutionally free to choose any reasonable form of representation they wish: by population, by area, or by occupations as in guild socialism."

Is there any more reason to assume a different rule as respects the franchise? Both deal with the voter's participation in the political process, one primarily with respect to the legislature, the other with respect to choosing executive and judicial officers.

United States v. Moseley, 238 U. S. 383, 59 L. Ed. 1355 (1915), frequently cited in support of the "reversal" attacks on the county-unit system, is also not on point. The "right to have one's vote counted" therein referred to was in connection with a criminal prosecution under 18 U. S. C. A. 241, involving fraudulent and criminal acts of election officials in omitting from their returns the votes cast by certain citizens. Similarly, the case of **United States v. Saylor**, 322 U. S. 385, 88 L. Ed. 1341 (1944), invoked in opposition to the "dilution" aspects of the unit system, involved another criminal prosecution against Kentucky election officials for stuffing the ballot boxes with fictitious ballots. No one would deny that the rationale of these cases would support a civil cause of action upon identical facts, but to undertake to apply them to the present context is stretching logic too far. The presence of a *mens rea* is determinative.

Appellee also relied below on **Gates v. Long**, 172 Tenn. 471, 113 S. W. 2d 388 (1938), condemning one species of a "county unit" plan of party primaries. At an extra session in 1937, the Tennessee legislature enacted legislation requiring compulsory primaries and requiring that

such primaries for Senator, Governor and other state offices be conducted on the county unit basis. Each county was assigned a number of unit votes equal to that number of votes which the county cast for the party nominee in the last general election for Governor, divided by 100, subject however, to the limitation that such vote could in no event exceed 1/8 of 1% of the population of such county. Held: Federal decisions establish that the state can not discriminate among voters unless sustained by some rational basis, and this principle includes an abridgment effectuated by debasing the value of the votes of some of its citizens. **Here, the effect of the law is to penalize a county where more than 1/8 of its population vote.** To discourage large participation at the polls cannot be regarded as an evil to be dealt with by the police power, and hence the limitation is void. For reasons of separability, it carries with it the requirement of voting by county units, as the statute declares that the unit system is made "subject to the limitation . . ." etc., and it cannot be presumed that the Legislature would have enacted one without the other.

However, a dissenting judge declared:

". . . Neither the Constitution of Tennessee nor the Federal Constitution contains a requirement that the method of nominating candidates shall be by popular vote. Such provisions for nominating candidates are of comparatively recent date. 20 C. J. 111.

"Before the inauguration of the primary system candidates were not nominated by popular vote, but in conventions in which the delegates assembled and in which each county usually voted as a unit.

"The county unit plan for nominating candidates for public office is much older than the party primary

"To assume that political power is a function exclusively of numbers is to disregard the practicalities of government. Thus, the Constitution protects the interests of the smaller against the greater by giving in the Senate entirely unequal representation to populations. It would be strange indeed and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the States."

In the **Baker** case, it should be recalled, the Tennessee Constitution had adopted population as a basis for apportionment, but the legislature had consistently refused to follow it, with the result that Tennessee's apportionment by 1961 was inexplicable on any basis. As emphasized by Mr. Justice Clark (Id. at 254), there were unexplained disparities in representation between counties of substantially equal population, as well as between counties of widely-varying population.

Under the Georgia unit system, on the other hand, which heretofore was tied to legislative apportionment, the Legislature has never failed to reapportion in accordance with the Constitutionally-imposed standard.[33] See, for example, Ga. Laws 1961, p. 111, reapportioning the House of Representatives following the 1960 census.

Georgia, unlike Tennessee, has adopted and consistently followed a reasonable and recognizable basis—the relative

[33] Ga. Constitution, Art. III, Sec. III, Par. I

standing, population-wise, of county units, so arranged as to achieve a "proper diffusion" of political power.

While originally, the county unit system was tied to legislative apportionment,[34] the revised version is not, but utilizes a bracket system.[35]

This bracket system is reasonably uniform, however, and diminishes the unit vote gradually in proportion to county population with each succeeding higher population bracket.

Other recent cases demonstrate the distinguishing features of the Georgia system.

In **Radford v. Gary**, 145 F. Supp. 541 (D. C. Okl. 1956), aff'd 352 U. S. 991 (1957), denying relief from legislative malapportionment contrary to the state constitution, even the dissenting judge distinguished **South**, viz.:

> ". . . South v. Peters, although recognizing the Federal Court's basic jurisdiction, merely reiterates the policy of refusing to exercise equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions. In the South case the complaint was against the manner in which the local law chose to distribute its electoral strength, admittedly a fundamental right retained by all states. Here, the controlling local law itself, in the form of a State constitutional provision is being ignored with the result that plaintiff is being denied 'equal protection of the laws.'"

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[34] See Ga. Code, Sec. 34-3212, prior to its 1962 Amendment (R. 15-16).

[35] See "Appendix A."

system. For 150 years the President of the United States has been elected by the unit vote of the states and not by the popular vote of the electorate. Under the Twelfth Amendment to the Federal Constitution, ratified in 1804, when the election of President is thrown into the House of Representatives, each state has only one vote. So that New York with nearly three times the population of Tennessee, has no more weight or strength than the latter state.

"Prior to the ratification of the Seventeenth Amendment to the Federal Constitution in 1913, United States Senators were elected by the various State Legislatures and not by popular vote.

"In Davidson County v. Kirkpatrick, 150 Tenn. 546, 551, 266 S. W. 107, 109, it was said:

> 'The county existed as a unit of government when the state was organized under the Constitution of 1796, and is an integral part, an arm, of the state. Hill v. Roberts, 142 Tenn. 215, 222, 217 S. W. 826.'

* * * * * * *

"In the fourth place, it is insisted that the Unit Primary Bill violates the Fourteenth Amendment to the Federal Constitution which provides: 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

"It is difficult to understand how this amendment could be said to condemn a plan approved and provided for in the original constitution.

"This amendment, however, does not provide that the vote of a state shall be determined by the popular majority."

This case is obviously distinguishable from Georgia in that (1) Tennessee law required a compulsory primary. Georgia law does not, but merely sets up rules to govern if one is held (2) the discriminatin effected by the Tennessee law applied to all counties regardless of size, and on its face indicated that it was designed to penalize any county simply because of large participation by its citizens in prior election—clearly an unreasonable basis for differentiation.

The Court has yet to define the required standards of apportionment under the new judicial competency enunciated in **Baker v. Carr**, but whatever the final determination, the political arrangement here in issue is clearly supported by the **MacDougall** and **South** cases. This case was tried on affidavits and the verified answer of defendants was admitted in evidence. One part of that answer declares:

"Defendants also show that voters in the metropolitan and urban areas have opportunities for political organization and advancement not available to voters in areas of less population density; that Georgia is the largest state east of the Mississippi River, comprising myriad combinations of rural, urban and metropolitan areas, all embracing a wide cross-section of agricultural, commercial and industrial endeavors, and having people with widely-varying economic, social and political interests; that large, efficiently-organized and well-financed groups and organizations exist in the several large metropolitan areas possessed of the power, ability and demon-

strated inclination to effectively organize and regiment political action along group-interest lines; that such opportunities for concerted and collective action are not as readily available to areas of smaller population concentration; that powerful and influential newspaper and other communication media exist in the great metropolitan centers which daily exercise their forces so as to marshall public opinion along sectional and group interest lines; that less populous areas lack equivalent or comparable means of communication capable of mobilizing public opinion in accordance with local interests; and that the county unit method of nominating candidates in primary elections is reasonably designed to give recognition to the pattern of state organization on a county unit basis, and to achieve a reasonable balance as between urban and rural electoral power."

Since the Court below specifically upheld the unit system *per se* (R. 202), little need here be said concerning the reasonableness of a system whereby political subdivisions are permitted to speak as units. As pointed out in David, Goldman and Bain, **The Politics of National Party Conventions**, p. 199 (The Brookings Institution, 1960);

> "In one form or another, the unit rule has been used to some extent in the Democratic party throughout its history. It was never adopted as a part of the national rules of the Republican Party, though it was an issue in that party for a time."

The authors trace the history of the rule in both parties, discussing the various arguments presented for and against it (Id., pp. 199-208), but appellants perceive that this Court is no more competent to resolve this dispute as a constitutional issue than it is to adjudicate the merits

and demerits as between the Democratic and Republican parties themselves.

As previously seen, the county unit system of primary nominations is simply a substitute for the convention system.

3. The County-Unit System Is Not Invidiously Discriminatory.

"Appendix B" to this Brief contains a comparison of the unit-vote distribution between the various counties in Georgia according to the 1910 and 1960 census figures. A quantity referred to as the "ratio of equality" indicates the amount by which a county's unit vote is weighted. This ratio is defined as the ratio of a given county's percentage of the total unit vote to that county's percentage of the total population. It ranges from a low of 52 per cent for Fulton, the most populous county to 740 per cent for Echols, the least populous county. Of course, the true index as held by the Court below is to compare Fulton's with the state as a whole, and not just against one small county (R. 199); and see **South v. Peters**, 89 F. Supp. at 676. So being, it follows that the vote of a voter in Fulton County is now equal to 52 per cent of the state average, whereas in 1910, it was only 23 per cent of the state average. Prior to the 1960 amendment, Fulton, with 14.11 per cent of the state population, had only 1.46 per cent of the unit vote—a ratio of equality of 10.4 per cent.

Considered differently, 18 counties having 52.28 per cent of the state's population now have 34.92 per cent of the state's unit vote.

Can this Court say that Fulton's ratio should be more than 52 per cent? If so, how much more? What is the

"judicially manageable" standard which applies? Would a factor of 85 per cent be rational? And what percentage of the total unit vote should the eighteen counties just referred to have?

In 1917, when the county unit method was enacted into law, the 8 largest counties had about 10.4 per cent of the unit vote, and 19.6 per cent of the population, giving a ratio of equality of .53. After the 1962 amendment, the 8 largest counties had 24.2 per cent of the unit vote and 41.3 per cent of the population, giving a ratio of equality of .585—an improvement over the act as originally enacted, as to the larger counties. Under the 1962 amendment, the average population per unit vote is 7210 persons. In Fulton County, the most populous county, the population per unit vote is 13,908, a disparity of 1 to 1.93. Under the electoral college, the disparity as between California and the average for the country as a whole in 1960 was 1 to 1.47. Under the formula laid down by the court below, the constitutionality of Georgia's county unit system would vary from year to year, and what is today held void may be valid a few years hence assuming shifts in the electoral college.

Under the electoral college, a vote in Alaska is equal to 5.21 votes in California, and a vote in Nevada is equal to 4.13 votes in California. Theoretically, 43.3 per cent of the population residing in 39 states could cast a majority (269) of the total electoral vote (535).

Other comparisons are set forth in "Appendix C" to this brief.

If the County Unit System was valid in the form upheld in **South v. Peters**, with stronger reason it is valid now, when the population per unit vote in Fulton County has been reduced from about 92,000 to 13,000.

See also "Appendix D," for theoretical minimums under the electoral college system.

Added to this, the Court has repeatedly held that equal protection refers to persons, not geographical areas, and its requirements are satisfied if all persons within the given area are treated equally. **Salsburg v. Maryland**, 346 U. S. 545, 551, 98 L. Ed. 281 (1954); **McGowan v. Maryland**, 366 U. S. 420, 6 L. Ed. 2d 393 (1961).

4. The County Unit System Does Not Violate the Seventeenth Amendment.

While this contention was raised by the complaint (R. 11), it is apparent that the Court below did not rule on it. However, from a study of the legislative history of the Seventeenth Amendment, it is clear that the Amendment was not inspired by any desire for more democratic processes or equal suffrage, but simply because of dissatisfaction with the corruption of state legislatures and the frequent deadlocks which occurred under the original constitution, frequently resulting in a state being without senate representation. See 62nd Cong., 2nd Sess. 1911-1912, Senate Documents, Vol. 38, Doc. No. 666; 62nd Cong., 1st Sess., House Reports, Vol. I, Report No. 2 (April 12, 1911), 46 Cong. Rec. 1103 (Part, 61st Cong., 3rd Sess.); House Document No. 74, p. 60, 54th Cong., 2nd Sess. (1896-7); "Proposed Amendments to the Constitution," House Doc. 551, 70th Cong., 2nd Sess., p. 215.

Moreover, assuming plaintiff's contention to be correct as to the meaning of "by the people," it would produce the absurd result wherein candidates seeking nomination for U. S. Senator could not be nominated by the convention system in any state where the nominating process was considered an integral part of the election machinery.

United States v. Classic, 313 U. S. 299, 85 L. Ed. 1368 (1941).

Furthermore, "elected by the people," as used in the 17th Amendment, and "chosen . . . by the people" as used in Art. I, Sec. 2, have reference to the "final choice of an officer by the duly qualified electors." They do not refer to the nomination of party candidates, or to party primaries, which were unknown in 1787, and virtually unknown in 1912. **Hawke v. Smith**, 253 U. S. 221; **Newberry v. United States**, 256 U. S. 332. And see American Historical Review, Vol. 5, No. 2, p. 253. "The Rise and Fall of the Nominating Caucus, Legislative and Congressional: An Introduction to Political Parties and Practical Politics", by Prof. P. Orman Ray (Scribner, 1924), p. 109.

5. **The Constitutional Adjudication Here Was Premature.**

Under the County Unit Act, as amended (Appendix A), a candidate would not be entitled to nomination in the first primary unless he received not only a majority of county unit votes, but also a majority of popular votes. The run-off would be held between the candidate receiving the greatest county unit vote, and the candidate receiving the greatest popular vote. In the event the candidate receiving the greatest county unit vote also received the greatest popular vote, then the run-off would be conducted between the candidate receiving the greatest county unit vote, and the candidate receiving the next highest popular vote. As previously stated herein, there would have been no practical difference this year with respect to the races for U. S. Senator, Governor and other State House Officers, whether the County Unit System was in effect or not. Had the County Unit System been in effect, there would not have been a run-off for the office

of Lieutenant Governor, but in any event, the same result ultimately achieved in the run-off primary would have been accomplished under the County Unit Act, as amended, in the first primary. Consequently, appellants submit that the Court below, upon being advised of the passage of the 1962 Amendment containing the provisions hereinbefore referred to, should have dismissed the complaint under the rule that "determination of the scope and constitutionality of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial function." **International Longshoremen's and Warehousemen's Union v. Boyd**, 347 U. S. 222, 224, 98 L. Ed. 650 (1954).

6. The Decree Below Was Too Broad.

The Decree rendered in this case not only declared the statute void, but undertook to define how it should be rewritten (R. 202 et seq.). This, it is submitted, was error. **Hague v. Committee for Industrial Organization et al.**, 307 U. S. 496, 518, 83 L. Ed. 1423 (1939).

VIII.

CONCLUSION.

There is no constitutional basis for asserting that voting equality must exist in a general election, much less in a party primary. If the Georgia County unit law, admittedly a substitute for a convention system, is held to be invalid, there is no logical reason why this Court should not thereby project itself into the political morass of party conventions, with all of their bitter factional disputes. Whatever one may think of the wisdom of the county unit

system, more vestiges of democratic processes inhere in it than in most convention nomination.

Respectfully submitted,

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APPENDIX A.

Georgia Statutes in Question.

Ga. Code Ann., § 34-3212. County Unit Vote. (a) Whenever any political party in this state shall hold a primary election for nomination of candidates for United States Senator, Governor, Lieutenant Governor, Statehouse officers, Justices of the Supreme Court and Judges of the Court of Appeals, such party or its authorities shall cause all candidates for nominations for said offices to be voted for on one and the same day each year in which there is a regular general election, on such day as now or hereafter may be prescribed by law. Candidates for nominations to the above named offices who receive, respectively, the highest number of popular votes in any given county shall be considered to have carried such county, and shall be entitled to the full vote of such county on the county unit basis as more fully hereinafter set forth.

(b) County unit votes shall be allocated among the several counties of this State in accordance with the following bracket system.

Population of County	Unit Votes
0- 15,000	2
15,001- 20,000	3
20,001- 30,000	4
30,001- 45,000	5
45,001- 60,000	6
60,001- 90,000	8
90,001-120,000	10
120,001-150,000	12
150,001-180,000	14
180,001-210,000	16
210,001-240,000	18
240,001-270,000	20
270,001-300,000	22
300,001-330,000	24
330,001-360,000	26
360,001-390,000	28
390,001-420,000	30
420,001-450,000	32
450,001-480,000	34
480,001-510,000	36
510,001-540,000	38
540,001-570,000	40
570,001-600,000	42
600,001-630,000	44
630,001-660,000	46
660,001-690,000	48
690,001-720,000	50

and for each 30,000 population in excess of 720,000 said county shall be entitled to an additional (2) unit votes.

The county unit votes hereinbefore allocated shall be allocated according to the latest federal decennial census, or any future federal decennial census as officially published from time to time.

(c) If in any county any two or more candidates should tie for the highest number of popular votes received, the county unit vote of such county shall be equally divided between the candidates so tying. All such county unit votes shall within 10 days after such primary be accurately consolidated by the chairman and secretary of the State committee of the political party holding such primary, and published at least one time in a newspaper published at the Capital, within three days after the completion of the consolidation, certified under the hands and seals of said chairman and secretary; and the candidates for said offices, respectively, who shall receive a majority of all the county unit votes, throughout the entire State, upon the basis above set forth, shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for the above named offices, respectively, and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held as the duly nominated candidates of such party for the offices named: Provided, that in the event there are only two candidates for any particular office referred to in this section, and it shall appear, after the consolidation of all the county unit votes throughout the State, that said candidates have received

an equal number of county unit votes, the one who shall have received a majority of the popular votes shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for such office; and provided, however (except as hereinabove provided in case of a tie in unit votes) no political party holding a statewide primary for the nomination of candidates named in this Section, as amended, shall declare any candidates for any such office the nominee of said party for such office unless such candidate shall have received in the primary a majority of all the county unit votes as hereinbefore provided for, and also a majority of all the popular votes cast in such primary. If no such candidate shall receive a majority of the county unit votes and also a majority of the popular votes cast in such primary, there shall be a second primary election for such office held in the manner provided in Section 34-3213, as amended, between the candidate receiving the greatest number of county unit votes and the candidate receiving the greatest number of popular votes, but if the candidate receiving the greatest number of county unit votes also received the greatest number of popular votes, then the run-off shall be held between the candidate receiving the greatest number of county unit votes and the candidate receiving the next greatest number of popular votes. The results of such run-off primary election shall be determined and given effect as provided in said Section 34-3213, as amended.

(d) It shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the name of such successful candidate is placed upon the tickets or ballots of such party at the general election following such pri-

mary, and such successful candidate shall be considered, deemed and held as the duly nominated candidate of such party for the office named: Provided, further, that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts 1917, pp. 183, 184; 1950, pp. 79, 80; 1962, Ex. Sess., p. 1217).

Ga. Code Ann., § 34-3213, Second Primary Election. In the event that a run-off primary is required as provided in Section 34-3212, as amended, such political party shall hold a second primary throughout the State on a day fixed by the State Executive Committee of the political party holding such primary, and such run-off primary shall be held between the candidates as provided in Code Section 34-3212, as amended. The vote in such run-off primary shall be consolidated and the result declared and certified within 10 days after said second primary election, and published at least one time in a newspaper published at the Capital within three days after the completion of such consolidation, certified under the hands and seals of said chairman or secretary, and the candidate who shall receive a majority of the county unit votes throughout the State shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for the particular office for which he is a candidate; and it shall be the duty of the State Executive Committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates

shall be considered, deemed and held to be the duly nominated candidates of such party for the office named: Provided, that if both candidates for any office in said second primary election shall receive an equal number of county unit votes, after the consolidation of all the county unit votes of all the counties, then said State convention or the permanent chairman thereof, or the Secretary thereof, or other authority of such party, shall declare the candidate receiving the majority of the popular votes cast the regular nominee of such party for that particular office: Provided, further that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts 1917, pp. 183, 185; 1950, pp. 79, 82; 1962, Ex. Sess., pp. 1217, 1221)

Ga. Code Ann., § 34-3214. Convention, when held. In each regular election year in which a second primary shall be necessary, by reason of a failure of a candidate or candidates to receive a majority of the county unit votes at the first primary election, such party or its authority shall not hold its convention until after the expiration of 15 days from the date of such second primary election (Acts 1917, p. 188).

Ga. Code Ann., § 34-3215. Special primary elections to fill vacancies. Special primary elections to fill vacancies in any of the offices referred to in this law shall be held on such date as may be fixed by the State executive committee of such party; but the same rules prescribed in this law for determining the result in general primary elections for the offices named shall govern in determining the result of any special primary election; and a second primary election shall be held within 15 days after the date of such first primary election, in the event no candidate receives a majority of all of the county unit votes thereto

out the State; and the same duties and obligations are hereby imposed upon the chairman, secretary, convention or other party authorities in the case of such special primary elections as are in this law imposed upon them in the case of general primary election: Provided, that if no convention of such party shall be called or held, to follow a special primary election, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts 1917, p. 188).

Ga. Code Ann., § 34-3215.1 Certificate of result of election. Immediately after the consolidation of the votes in any such primary election a certificate, showing the names of such candidates and the offices for which they are candidates, shall be filed in the office of the Secretary of State of this State; such certificate to be signed by the chairman and secretary of the State committee of the political party holding such primary. Said certificate shall show by counties the total number of popular votes and the county unit votes received by each candidate in any such primary election (Acts 1943, p. 347).

Ga. Code Ann., § 34-3217. Limitations. Nothing in this law shall be construed to provide or require any definite limit of election for candidates for nominations for members of Congress, judges of the superior courts, solicitors general, members of the General Assembly and county officers; and this law shall not be construed to require a primary for any of the last named officials, except in their respective districts, circuits or counties, as provided by law: Provided, however, that primaries for nomination of members of Congress, judges of the superior courts, solicitors general and members of the General Assembly shall be held on the date named in section 34-3212 for primaries for United States Senator, Governor, Statehouse officers,

Justices of the Supreme Court and Judges of the Court of Appeals (Acts 1917, p. 189).

Ga. Code Ann., § 34-3218. Laws of force. All the laws in reference to the qualification of voters and their registration shall apply to said elections, and no person who is not a duly qualified and registered voter according to law and who is not also duly qualified in accordance with the rules and regulations of the party holding the same, shall be entitled to vote at any such primary election (Acts 1917, p. 189).

Ratio of (% unit vote) Equality (% population)	% of Unit Votes	No. of Unit Votes	% of total Pop.	1960 Rank	1960 Population	County	1910 Rank	1910 Population	% of total Pop.	No. of Unit Votes	% of Unit Votes	Ratio of Equality
1.00	100.00	547	100.00		3,943,116	State		2,609,121	100.00	384	100.00	1.00
.52	7.31	40	14.11	1	556,326	Fulton	1	177,733	6.81	6	1.56	.23
.56	3.66	20	6.51	2	256,782	DeKalb	17	27,881	1.07	4	1.04	.97
.61	2.93	16	4.78	3	188,299	Chatham	2	79,690	3.05	6	1.56	.51
.64	2.56	14	4.02	4	158,623	Muscogee	6	36,227	1.39	6	1.56	1.12
.61	2.19	12	3.58	5	141,249	Bibb	4	56,646	2.17	6	1.56	.72
.64	2.19	12	3.44	6	135,601	Richmond	3	58,886	2.26	6	1.56	.69
.63	1.83	10	2.90	7	114,174	Cobb	15	28,397	1.09	4	1.04	.95
.76	1.46	8	1.92	8	75,680	Dougherty	68	16,035	.81	2	.52	.85
.83	1.46	8	1.75	9	69,130	Floyd	5	36,736	1.41	6	1.56	1.11
.87	1.10	6	1.26	10	49,739	Hall	22	25,730	.99	4	1.04	1.05
.88	1.10	6	1.25	11	49,270	Lowndes	26	24,436	.94	4	1.04	1.11
.92	1.10	6	1.20	12	47,189	Troup	20	26,228	1.01	4	1.04	1.03
.93	1.10	6	1.18	13	46,365	Clayton	107	10,453	.40	2	.52	1.30
.96	1.10	6	1.15	14	45,363	Clarke	31	23,273	.89	4	1.04	1.17
.96	1.10	6	1.15	15	45,264	Walker	53	18,692	.72	2	.52	.72
.83	.91	5	1.10	16	43,541	Gwinnett	13	28,824	1.10	4	1.04	.95
.85	.91	5	1.07	17	42,109	Whitfield	69	15,934	.61	2	.52	.85
.86	.91	5	1.06	18	41,954	Glynn	71	15,720	.60	2	.52	.87
.92	.91	5	.99	19	39,154	Houston	29	23,609	.90	4	1.04	1.16
.99	.91	5	.92	20	36,451	Carroll	8	30,855	1.18	6	1.56	1.32
1.01	.91	5	.90	21	35,404	Spalding	46	19,741	.76	2	.52	.68
1.05	.91	5	.87	22	34,319	Thomas	11	29,071	1.11	4	1.04	.94
1.05	.91	5	.87	23	34,219	Ware	32	22,957	.88	4	1.04	1.18
1.06	.91	5	.86	24	34,064	Baldwin	59	18,354	.70	2	.52	.74
1.06	.91	5	.86	25	34,048	Colquitt	45	19,789	.76	2	.52	.68
1.11	.91	5	.82	26	32,313	Laurens	7	35,501	1.36	6	1.56	1.15
1.00	.73	4	.73	27	28,895	Coweta	14	28,800	1.10	4	1.04	.95
1.01	.73	4	.72	28	28,267	Bartow	21	25,398	.97	4	1.04	1.07
1.03	.73	4	.71	29	28,015	Polk	41	20,203	.77	2	.52	.68
1.14	.73	4	.64	30	25,203	Decatur	12	29,045	1.11	4	1.04	.94
1.16	.73	4	.63	31	24,65[illegible]	Sumter	10	29,032	1.12	4	1.04	.93

APPENDIX B.

.83	.91	5	1.10	16	43,541	Gwinnett	13	29,824	1.10	4	1.04	.95
.85	.91	5	1.07	17	42,109	Whitfield	69	15,934	.61	2	.52	.85
.86	.91	5	1.06	18	41,954	Glynn	71	15,720	.60	2	.52	.87
.92	.91	5	.99	19	39,154	Houston	20	23,603	.90	4	1.04	1.16
.99	.91	5	.92	20	36,451	Carroll	8	30,855	1.18	6	1.56	1.32
1.01	.91	5	.90	21	35,404	Spalding	46	19,741	.76	2	.52	.68
1.05	.91	5	.87	22	34,319	Thomas	11	29,071	1.11	4	1.04	.94
1.05	.91	5	.87	23	34,219	Ware	32	22,957	.88	4	1.04	1.18
1.06	.91	5	.86	24	34,064	Baldwin	59	18,354	.70	2	.52	.74
1.06	.91	5	.86	25	34,048	Colquitt	45	19,789	.76	2	.52	.68
1.11	.91	5	.82	26	32,313	Laurens	7	35,501	1.36	6	1.56	1.15
1.00	.73	4	.73	27	28,895	Coweta	14	28,800	1.10	4	1.04	.95
1.01	.73	4	.72	28	28,267	Bartow	21	25,389	.97	4	1.04	1.07
1.03	.73	4	.71	29	28,015	Polk	41	20,203	.77	2	.52	.68
1.14	.73	4	.64	30	25,203	Decatur	12	29,045	1.11	4	1.04	.94
1.16	.73	4	.63	31	24,652	Sumter	10	29,032	1.12	4	1.04	.93
1.18	.73	4	.62	32	24,263	Bulloch	19	26,464	1.01	4	1.04	1.03
1.22	.73	4	.60	33	23,800	Upson	65	12,757	.49	2	.52	1.06
1.22	.73	4	.60	34	23,487	Tift	95	11,487	.44	2	.52	1.18
1.26	.73	4	.58	35	23,001	Cherokee	64	16,661	.64	2	.52	.81
1.30	.73	4	.56	36	21,953	Coffee	37	21,953	.84	4	1.04	1.24
1.35	.73	4	.54	37	21,101	Catoosa	129	7,194	.28	2	.52	1.86
1.38	.73	4	.53	38	20,999	Newton	58	19,449	.71	2	.52	.73
1.40	.73	4	.52	39	20,506	Burke	18	27,269	1.05	4	1.04	.99
1.40	.73	4	.52	40	20,481	Walton	23	25,393	.97	4	1.04	1.07
1.08	.55	3	.51	41	19,954	Chattooga	76	13,608	.52	2	.52	1.00
1.10	.55	3	.50	42	19,756	Meriwether	24	25,180	.97	4	1.04	1.07
1.10	.55	3	.50	43	19,652	Mitchell	35	22,114	.85	4	1.04	1.22
1.12	.55	3	.49	44	19,228	Gordon	70	15,861	.61	2	.52	.85
1.15	.55	3	.49	45	18,903	Washington	16	28,174	1.08	4	1.04	.96
1.17	.55	3	.47	46	18,499	Jackson	9	30,169	1.16	4	1.04	.90
1.17	.55	3	.47	47	18,391	Stephens	114	9,728	.37	2	.52	1.41
1.20	.55	3	.46	48	18,116	Habersham	109	10,134	.39	2	.52	1.33
1.20	.55	3	.46	49	18,015	Grady	57	18,457	.71	2	.52	.73
1.22	.55	3	.45	50	17,921	Wayne	82	13,069	.50	2	.52	1.04
1.22	.55	3	.45	51	17,835	Elbert	27	24,125	.92	4	1.04	1.13
1.22	.55	3	.45	52	17,815	Emanuel	25	25,140	.96	4	1.04	1.08
1.22	.55	3	.45	53	17,768	Crisp	66	16,423	.63	2	.52	.83

APPENDIX B.

Ratio of (% unit vote) Equality (% population)	% of Unit Votes	No. of Unit Votes	% of total Pop.	1960 Rank	1960 Population	County	1910 Rank	1910 Population	% of total Pop.	No. of Unit Votes	% of Unit Votes	Ratio of Equality
1.22	.55	3	.45	54	17,619	Henry	44	19,927	.76	2	.52	0.68
1.25	.55	3	.44	55	17,468	Jefferson	38	21,379	.82	4	1.04	1.27
1.28	.55	3	.43	56	16,837	Toombs	98	11,206	.43	2	.52	1.21
1.31	.55	3	.42	57	16,741	Douglas	119	8,953	.34	2	.52	1.53
1.31	.55	3	.42	58	16,682	Worth	51	19,147	.73	2	.52	0.71
1.31	.55	3	.42	59	16,483	Dodge	43	20,127	.77	2	.52	0.68
1.38	.55	3	.40	60	15,837	Tattnall	55	18,569	.71	2	.52	0.73
1.41	.55	3	.39	61	15,292	Brooks	28	23,832	.91	4	1.04	1.14
1.41	.55	3	.39	62	15,229	Hart	67	16,216	.62	2	.52	0.84
.97	.37	2	.38	63	14,919	Screven	42	20,202	.77	2	.52	0.68
1.00	.37	2	.37	64	14,543	Haralson	77	13,514	.52	2	.52	1.00
1.00	.37	2	.37	65	14,487	Liberty	83	12,924	.50	2	.52	1.04
1.00	.37	2	.37	66	14,485	Barrow	-	-	-			
1.06	.37	2	.35	67	13,846	Peach	-	-	-			
1.06	.37	2	.35	68	13,633	Ben Hill	90	11,863	.45	2	.52	1.16
1.06	.37	2	.35	69	13,620	Fannin	86	12,574	.48	2	.52	1.08
1.09	.37	2	.34	70	13,423	Columbia	87	12,328	.47	2	.52	1.11
1.09	.37	2	.34	71	13,274	Franklin	61	17,894	.69	2	.52	0.75
1.09	.37	2	.34	72	13,246	Appling	88	12,318	.47	2	.52	1.11
1.12	.37	2	.33	73	13,170	Macon	72	15,016	.58	2	.52	0.90
1.12	.37	2	.33	74	13,151	Early	60	18,122	.69	2	.52	0.75
1.12	.37	2	.33	75	13,101	Paulding	73	14,124	.54	2	.52	0.96
1.12	.37	2	.33	76	13,011	Chattahoochee	135	5,586	.21	2	.52	2.48
1.16	.37	2	.32	77	12,742	Terrell	36	22,003	.84	4	1.04	1.24
1.16	.37	2	.32	78	12,627	McDuffie	108	10,325	.40	2	.52	1.30
1.19	.37	2	.31	79	12,170	Forsyth	89	11,940	.46	2	.52	1.13
1.19	.37	2	.31	80	12,038	Berrien	34	22,772	.87	4	1.04	1.20
1.23	.37	2	.30	81	11,822	Cook	-	-	-			
1.23	.37	2	.30	82	11,715	Telfair	80	13,288	.51	2	.52	1.02
1.28	.37	2	.29	83	11,474	Dooly	39	20,554	.79	2	.52	0.66
1.29	.37	2	.29	84	11,246	Madison	63	16,851	.65	2	.52	0.80
1.32	.37	2	.28	85	11,193	Greene	56	18,512	.71	2	.52	0.73
1.32	.37	2	.28	86	11,167	Harris	62	17,896	.69	2	.52	0.75
1.32	.37	2	.28	87	11,079	Randolph	52	18,841	.72	2	.52	0.72
1.32	.37	2	.28	88	10,961	Wilkes	30	23,441	.90	4	1.04	1.16
1.37	.37	2	.27	89	10,572	Rockdale	120	8,916	.34	2	.52	1.53

1.06	.37	2	.35	69	13,620	Fannin	86	12,574	.48	2	.52	1.08
1.09	.37	2	.34	70	13,423	Columbia	87	12,328	.47	2	.52	1.11
1.09	.37	2	.34	71	13,274	Franklin	61	17,894	.69	2	.52	0.75
1.09	.37	2	.34	72	13,246	Appling	88	12,318	.47	2	.52	1.11
1.12	.37	2	.33	73	13,170	Macon	72	15,016	.58	2	.52	0.90
1.12	.37	2	.33	74	13,151	Early	60	18,122	.69	2	.52	0.75
1.12	.37	2	.33	75	13,101	Paulding	73	14,124	.54	2	.52	0.96
1.12	.37	2	.33	76	13,011	Chattahoochee	135	5,586	.21	2	.52	2.48
1.16	.37	2	.32	77	12,742	Terrell	36	22,003	.84	4	1.04	1.24
1.16	.37	2	.32	78	12,627	McDuffie	108	10,325	.40	2	.52	1.30
1.19	.37	2	.31	79	12,170	Forsyth	89	11,940	.46	2	.52	1.13
1.19	.37	2	.31	80	12,038	Berrien	34	22,772	.87	4	1.04	1.20
1.23	.37	2	.30	81	11,822	Cook	-	-	-			
1.23	.37	2	.30	82	11,715	Telfair	80	13,288	.51	2	.52	1.02
1.28	.37	2	.29	83	11,474	Dooly	39	20,554	.79	2	.52	0.66
1.28	.37	2	.29	84	11,246	Madison	63	16,851	.65	2	.52	0.80
1.32	.37	2	.28	85	11,193	Greene	56	18,512	.71	2	.52	0.73
1.32	.37	2	.28	86	11,167	Harris	62	17,886	.69	2	.52	0.75
1.32	.37	2	.28	87	11,079	Randolph	52	18,841	.72	2	.52	0.72
1.32	.37	2	.28	88	10,961	Wilkes	30	23,441	.90	4	1.04	1.16
1.37	.37	2	.27	89	10,572	Rockdale	120	8,916	.34	2	.52	1.53
1.37	.37	2	.27	90	10,495	Monroe	40	20,450	.78	2	.52	0.67
1.42	.37	2	.26	91	10,447	Murray	113	9,763	.37	2	.52	1.41
1.42	.37	2	.26	92	10,280	Morgan	47	19,717	.76	2	.52	0.68
1.42	.37	2	.26	93	10,240	Lamar	-	-	-			
1.42	.37	2	.26	94	10,144	Effingham	112	9,971	.38	2	.52	1.37
1.48	.37	2	.25	95	9,979	Hancock	50	19,189	.74	2	.52	0.70
1.48	.37	2	.25	96	9,975	Camden	127	7,690	.29	2	.52	1.79
1.48	.37	2	.25	97	9,678	Pierce	104	10,749	.41	2	.52	1.27
1.54	.37	2	.24	98	9,642	Bleckley	-	-	-			
1.61	.37	2	.23	99	9,250	Wilkinson	110	10,078	.39	2	.52	1.33
1.61	.37	2	.23	100	9,211	Irwin	106	10,461	.40	2	.52	1.30
1.61	.37	2	.23	101	9,148	Jenkins	94	11,520	.44	2	.52	1.18
1.61	.37	2	.23	102	8,976	Butts	75	13,624	.52	2	.52	1.00
1.61	.37	2	.23	103	8,922	Gilmer	115	9,237	.35	2	.52	1.49
1.61	.37	2	.23	104	8,914	Jeff Davis	134	6,050	.23	2	.52	2.26
1.61	.37	2	.23	105	8,903	Pickens	117	9,041	.35	2	.52	1.49
1.68	.37	2	.22	106	8,666	Dade	144	4,139	.16	2	.52	3.25
1.76	.37	2	.21	107	8,468	Jones	81	13,103	.50	2	.52	1.04

Ratio of Equality (% unit vote / % population)	% of Unit Votes	No. of Unit Votes	% of total Pop.	1960 Rank	1960 Population	County	1910 Rank	1910 Population	% of total Pop.	No. of Unit Votes	% of Unit Votes	Ratio of Equality
1.76	.37	2	.21	108	8,439	Turner	111	10,075	.39	2	.52	1.33
1.76	.37	2	.21	109	8,359	Bacon	-	-	-	-	-	-
1.76	.37	2	.21	110	8,311	Taylor	103	10,839	.42	2	.52	1.24
1.76	.37	2	.21	111	8,204	Pulaski	33	22,835	.88	4	1.04	1.18
1.76	.37	2	.21	112	8,199	Fayette	101	10,966	.42	2	.52	1.24
1.85	.37	2	.20	113	8,048	Johnson	84	12,897	.49	2	.52	1.06
1.85	.37	2	.20	114	7,935	Twiggs	105	10,736	.41	2	.52	1.27
1.85	.37	2	.20	115	7,926	Oglethorpe	54	18,680	.72	2	.52	.72
1.85	.37	2	.20	116	7,905	Wilcox	78	13,486	.52	2	.52	1.00
1.85	.37	2	.20	117	7,798	Putnam	74	13,876	.53	2	.52	.98
1.95	.37	2	.19	118	7,456	Rabun	136	5,562	.21	2	.52	2.48
1.95	.37	2	.19	119	7,371	Stewart	79	13,437	.52	2	.52	1.00
1.95	.37	2	.19	120	7,360	Warren	91	11,860	.45	2	.52	1.16
1.95	.37	2	.19	121	7,341	Calhoun	96	11,334	.43	2	.52	1.21
2.06	.37	2	.18	122	7,241	Lumpkin	137	5,444	.21	2	.52	2.48
2.06	.37	2	.18	123	7,138	Pike	49	19,495	.75	2	.52	.69
2.06	.37	2	.18	124	7,127	Talbot	92	11,696	.45	2	.52	1.16
2.06	.37	2	.18	125	6,952	Evans	-	-	-	-	-	-
2.06	.37	2	.18	126	6,935	White	139	5,110	.20	2	.52	2.60
2.06	.37	2	.18	127	6,908	Miller	125	7,986	.31	2	.52	1.68
2.18	.37	2	.17	128	6,802	Seminole	-	-	-	-	-	-
2.18	.37	2	.17	129	6,672	Candler	-	-	-	-	-	-
2.18	.37	2	.17	130	6,545	Clinch	123	8,424	.32	2	.52	1.63
2.18	.37	2	.17	131	6,510	Union	130	6,918	.27	2	.52	1.93
2.31	.37	2	.16	132	6,497	Banks	97	11,244	.43	2	.52	1.21
2.31	.37	2	.16	133	6,364	McIntosh	132	6,442	.25	2	.52	2.08
2.31	.37	2	.16	134	6,304	Oconee	100	11,104	.43	2	.52	1.21
2.31	.37	2	.16	135	6,284	Montgomery	48	19,638	.75	2	.52	.69
2.31	.37	2	.16	136	6,226	Bryan	131	6,702	.26	2	.52	2.00
2.31	.37	2	.16	137	6,204	Lee	93	11,679	.45	2	.52	1.16
2.31	.37	2	.16	138	6,188	Atkinson	-					
2.31	.37	2	.16	139	6,135	Jasper	65	16,552	.63	2	.52	.83
2.47	.37	2	.15	140	5,906	Lincoln	122	8,714	.33	2	.52	1.58
2.47	.37	2	.15	141	5,891	Brantley	-	-	-	-	-	-
2.47	.37	2	.15	142	5,874	Treutlen	-	-	-	-	-	-

2.06	.37	2	.18	123	7,138	Pike	49	19,495	.75	2	.52	.69
2.06	.37	2	.18	124	7,127	Talbot	92	11,696	.45	2	.52	1.16
2.06	.37	2	.18	125	6,952	Evans	-	-	-	-	-	-
2.06	.37	2	.18	126	6,935	White	139	5,110	.20	2	.52	2.60
2.06	.37	2	.18	127	6,908	Miller	125	7,986	.31	2	.52	1.68
2.18	.37	2	.17	128	6,802	Seminole	-	-	-	-	-	-
2.18	.37	2	.17	129	6,672	Candler	-	-	-	-	-	-
2.18	.37	2	.17	130	6,545	Clinch	123	8,424	.32	2	.52	1.63
2.18	.37	2	.17	131	6,510	Union	130	6,918	.27	2	.52	1.93
2.31	.37	2	.16	132	6,497	Banks	97	11,244	.43	2	.52	1.21
2.31	.37	2	.16	133	6,364	McIntosh	132	6,442	.25	2	.52	2.08
2.31	.37	2	.16	134	6,304	Oconee	100	11,104	.43	2	.52	1.21
2.31	.37	2	.16	135	6,284	Montgomery	48	19,638	.75	2	.52	.69
2.31	.37	2	.16	136	6,226	Bryan	131	6,702	.26	2	.52	2.00
2.31	.37	2	.16	137	6,204	Lee	93	11,679	.45	2	.52	1.16
2.31	.37	2	.16	138	6,198	Atkinson	-					
2.31	.37	2	.16	139	6,135	Jasper	65	16,552	.63	2	.52	.83
2.47	.37	2	.15	140	5,906	Lincoln	122	8,714	.33	2	.52	1.58
2.47	.37	2	.15	141	5,891	Brantley	-	-	-	-	-	-
2.47	.37	2	.15	142	5,874	Treutlen	-	-	-	-	-	-
2.47	.37	2	.15	143	5,816	Crawford	124	8,310	.32	2	.52	1.63
2.64	.37	2	.14	144	5,477	Marion	116	9,147	.35	2	.52	1.49
2.64	.37	2	.14	145	5,342	Wheeler	-	-	-	-	-	-
2.64	.37	2	.14	146	5,333	Heard	89	11,189	.43	2	.52	1.21
2.85	.37	2	.13	147	5,313	Charlton	240	4,722	.18	2	.52	2.89
2.85	.37	2	.13	148	5,097	Lanier	-	-	-	-	-	-
3.08	.37	2	.12	149	4,551	Clay	118	8,760	.34	2	.52	1.53
3.08	.37	2	.12	150	4,543	Baker	126	7,973	.31	2	.52	1.68
3.08	.37	2	.12	151	4,539	Towns	145	3,937	.15	2	.52	3.47
3.70	.37	2	.10	152	3,814	Long	-	-	-	-	-	-
4.11	.37	2	.09	153	3,590	Dawson	141	4,686	.18	2	.52	2.89
4.11	.37	2	.09	154	3,370	Taliaferro	121	8,766	.34	2	.52	1.53
4.63	.37	2	.08	155	3,256	Schley	138	5,213	.20	2	.52	2.60
4.63	.37	2	.08	156	3,247	Webster	133	6,151	.24	2	.52	2.17
5.29	.37	2	.07	157	2,672	Glascock	142	4,669	.18	2	.52	2.89
6.17	.37	2	.06	158	2,432	Quitman	143	4,594	.18	2	.52	2.89
7.40	.37	2	.05	159	1,876	Echols	146	3,309	.13	2	.52	4.00

APPENDIX C.

Comparison of the Georgia County-Unit System Before and After Revision.

1. Minimum Proportion of Population Required (Hypothetically) to Cast a Majority of Total County-Unit Votes

   a. **Before revision—22.2%** of the total population of Georgia residing in **94 counties** could hypothetically cast a majority (206) of the total county-unit votes (410). See Exhibit A.

   b. **After revision—32.08%** of the total population of Georgia residing in **115 counties** could hypothetically cast a majority (274) of the total county-unit votes (547). See Exhibit B.

2. Comparison of Population Per County-Unit Vote in Largest and Smallest Counties (Fulton and Echols)

   a. **Before revision**

      Echols—938 population per county-unit vote.

      Fulton—92,721 population per county-unit vote. (See Exhibit A.)

   b. **After revision**

      Echols—938 population per county-unit vote.

      Fulton—13,908 population per county-unit vote. (See Exhibit B.)

   c. Comparison of Voting Strength: Voting strength in the Primary Election of Echols County to Fulton County was about **99 to 1** (92,721 divided by 938) before revision; about **15 to 1** (13,908 divided by 938) after revision.

3. Proportion of Total County-Unit Votes Allocated to Eight Largest Counties.

   a. **Before revision** Eight largest counties were allocated **11.7%** of the total county-unit votes (48 divided by 410).

   b. **After revision** Eight largest counties were allocated **24.1%** of the total county-unit votes (132 divided by 547), or more than double the former proportion.

4. Proportion of Total County-Unit Votes Allocated to Upper Half and Lower Half of the Counties (in terms of population)

   a. **Before revision** Lower one-half (80 of 159) of the counties, in terms of population, were allocated about **39%** of the total county-unit votes (160 divided by 410).

   b. **After revision** Lower one-half (80 of 159) of the counties, in terms of population, were allocated about **29%** of the total county-unit votes (160 divided by 547).

   c. Conversely, for the **upper one-half**:

      Before revision Upper one-half allocated **61%** of the total county-unit votes.

      After revision Upper one-half allocated **71%** of the total county-unit votes.

5. Proportion of Total County-Unit Votes Allocated to Lowest One-third (53 of 159) of Counties (in terms of population)

   a. **Before revision** Lowest one-third (53 of 159) counties were allocated about **26%** of the total county-unit votes (106 divided by 410).

b. **After revision**—Lowest one-third (53 of 159) counties were allocated about **19%** of the total county-unit votes (106 divided by 547).

6. Proportion of Total County-Unit Votes Allocated to Upper One-third of Counties (in terms of population)

a. **Before revision**—Upper one-third (53 of 159) counties were allocated about **48%** of the total county-unit votes (198 divided by 410).

b. **After revision**—Upper one-third (53 of 159) counties were allocated about **60%** of the total county-unit votes (326 divided by 547).

7. Proportion of Total County-Unit Votes Allocated to Lowest One-fourth of Counties (in terms of population)

a. **Before revision**—Lowest one-fourth (40 of 159) of counties were allocated about **20%** of the total county-unit votes (80 divided by 410).

b. **After revision**—Lowest one-fourth (40 of 159) of counties were allocated about **15%** of the total county-unit votes (80 divided by 547).

8. Proportion of Total County-Unit Votes Allocated to Upper One-fourth of Counties (in terms of population)

a. **Before revision**—Upper one-fourth (40 of 159) of counties were allocated about **42%** of the total county-unit votes (172 divided by 410).

b. **After revision**—Upper one-fourth (40 of 159) of counties were allocated about **52%** of the total county-unit votes (287 divided by 547).

Appendix D.

PROPORTION OF TOTAL ELECTORAL VOTES WHICH CAN BE CAST BY

VARIOUS PROPORTIONS OF THE POPULATION

POPULATION PROPORTIONS BASED ON STATES RANKED IN ORDER OF POPULATION.

STATES RANKED ACCORDING TO POPULATION	POPULATION 196[illegible]	ELECTORAL VOTES ALLOCATED 1962	CUMULATIVE TOTAL - ELECTORAL VOTES	CUMULATIVE TOTAL - % OF POP. POPULATION
1 NEW YORK	16782304	43	43	[illegible]
2 CALIFORNIA	15717204	40	83	18.12
3 PENNSYLVANIA	11319366	29	112	24.42
			24.04	
4 ILLINOIS	10081158	26	138	[illegible]
5 OHIO	9706397	26	164	33.47
			33.53	
6 TEXAS	9579677	25	189	[illegible]
7 MICHIGAN	7823194	21	210	43.17
8 NEW JERSEY	6066782	17	227	46.55

APPENDIX D.

8	NEW JERSEY	[illegible]	12	[illegible]	[illegible]
9	MASSACHUSETTS	[illegible]	14	[illegible]	[illegible]

[illegible]

1	FLORIDA	[illegible]	14	[illegible]	[illegible]
11	INDIANA	[illegible]	13	[illegible]	[illegible]
12	NORTH CAROLINA	[illegible]	13	[illegible]	[illegible]
13	MISSOURI	[illegible]	14	[illegible]	[illegible]
14	VIRGINIA	[illegible]	12	[illegible]	[illegible]
15	WISCONSIN	[illegible]	12	[illegible]	[illegible]

[illegible]

16	GEORGIA	3943116	12	[illegible]	[illegible]
17	TENNESSEE	3567089	11	[illegible]	[illegible]
18	MINNESOTA	3413864	10	[illegible]	[illegible]
19	ALABAMA	3266740	10	[illegible]	[illegible]
20	LOUISIANA	3257022	10	[illegible]	[illegible]

68.8%

21	MARYLAND	3100689	10	[illegible]	[illegible]
22	KENTUCKY	3038156	9	389	79.30%
23	WASHINGTON	2853214	9	[illegible]	[illegible]
24	IOWA	2757537	9	407	[illegible]

24	IOWA	2757537	4	407	52.43%
25	CONN.	2535234	6	415	53.85%
26	SOU. CAROLINA	2382594	6	423	85.18%
27	OKLAHOMA	2328284	8	431	86.47%
28	KANSAS	2178611	7	438	87.69%
29	MISSISSIPPI	2178141	7	445	88.90%
30	WEST VIRGINIA	1860421	7	452	89.94%
31	ARKANSAS	1786272	6	458	90.94%
32	OREGON	1768687	6	464	91.92%
33	COLORADO	1753947	6	470	92.91%
34	NEBRASKA	1411338	5	475	93.89%
35	ARIZONA	1302161	5	480	94.86%
36	NEVADA	1054260	4	484	94.98%
37	NEW MEXICO	951023	4	488	95.49%
38	UTAH	890627	4	492	95.97%
39	RHODE ISLAND	859488	4	496	96.46%
40	DIST. OF COLUMBIA	763956	3	499	96.85%
41	SOUTH DAKOTA	680514	4	503	97.27%
42	MONTANA	674767	4	507	97.64%
43	IDAHO	667191	4	511	98.02%
44	HAWAII	632772	4	515	98.37%
45	NORTH DAKOTA	632446	4	519	98.72%
46	NEW HAMPSHIRE	606921	4	523	99.08%
47	DELAWARE	446292	3	526	99.31%
48	VERMONT	389881	3	529	99.53%
49	WYOMING	330066	3	532	99.71%
50	ALASKA	296737	3	535	99.87%

30	W. VIRGINIA	1860421	7	452	89.94%
31	ARKANSAS	1786272	6	458	90.94%
32	OREGON	1768687	6	464	91.92%
33	COLORADO	1753947	6	470	92.91%
34	NEBRASKA	1411330	5	475	93.84%
35	ARIZONA	1302161	5	480	94.81
36	[illegible]	1092[illegible]	4	484	94.98%
37	NEW MEXICO	951[illegible]	4	488	95.49%
38	UTAH	890627	4	492	95.70%
39	RHODE ISLAND	859488	4	496	96.48%
40	DIST. OF COLUMBIA	763956	3	499	96.89%
41	SOUTH DAKOTA	680514	4	503	97.27%
42	MONTANA	674767	4	507	97.64%
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44	HAWAII	632772	4	515	98.37%
45	NORTH DAKOTA	632446	4	519	98.72%
46	NEW HAMPSHIRE	606921	4	523	99.08%
47	DELAWARE	446292	3	526	99.31%
48	VERMONT	359861	3	529	99.53%
49	WYOMING	330066	3	532	99.71%
50	NEVADA	285278	3	535	99.87%
51	ALASKA	226167	3	538	100.00%

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